36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 563.

MISSOURI CONTESTED ELECTION.

MAY 22, 1860.—Ordered to be printed, together with the views of the minority.

Mr. DAWES, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom was referred the memorial of Hon. Francis P. Blair, jr., contesting the right of Hon. J. Richard Barrett to a seat in the House of Representatives as a member of the thirty-sixth Congress from the first congressional district of the State of Missouri, having examined and considered the same, together with the evidence and arguments submitted therewith, report:

The election here contested was held by ballot on the 2d day of August, 1858. The district is composed of the city and county of St. Louis. The official canvass disclosed the following result of the vote, viz:

For J. R. Barrett, 7,057 votes; for F. P. Blair, jr., 6,630 votes; for S. M. Breckinridge, 5,668 votes—showing a plurality for the sitting member over the contestant of 427 votes. But a clerical error in one of the precincts gave to Mr. Blair 180 votes more than the actual poll in that precinct; so that the actual plurality of Mr. Barrett over Mr. Blair was 607 votes. A plurality elects. The contest has been carried on in conformity with the provisions of the act of February 19, 1851. The proofs are very voluminous, filling 953 pages of printed matter, and are to be found in Miscellaneous Document No. 8. The committee heard both the contestant and sitting member, by themselves and by counsel, at great length, though no longer than the magnitude and complication of the case seemed to require. The briefs submitted on each side have been printed by order of the House, and may be referred to for the legal views which are urged by the respective parties.

The notice of contest which accompanies the proof contains nineteen grounds of contest. The answer of sitting member, which may be also found with the proofs, after denying specifically the several grounds of contest contained in the notice, makes, in turn, fifteen distinct charges of the grounds upon which the claim of the contestant is disputed.

The manner of voting is peculiar to this district. It is provided by law that "at all elections by ballot it shall be the duty of the judges of election, in receiving the ballots and registering the names and number of the votes, to place the number which shall be recorded opposite the voter's name on the list also on the ballot offered by him

before depositing the same into the ballot-box." The judges are required, after certifying the result, to transmit the same, together with one of the poll-books, to the clerk of the county court, and provision is made for compensation to them for their services in conducting elections and returning the poll-books and ballots to the county clerk's office. This peculiar statute provision, if faithfully executed, renders it an easy matter to ascertain with certainty, whenever it is necessary, for whom every voter in the district cast his ballot. It is properly entitled "An act to facilitate the detection of fraud in elections," and its title indicates clearly enough the purpose of its enactment. A comparison of the number on each ballot, at any time after the election, with the corresponding number on the poll-book will, if the poll-books have been honestly kept, disclose against that number the name of the person who deposited that ballot; and when the ground of contest is that the votes are illegal, nothing but the qualification of the voter is left for further inquiry. After the notice of contest was served upon the sitting member, charging that great numbers of illegal voters cast their ballots for him, the contestant made application to the clerk of the county court for liberty to inspect the numbered ballots cast at this election. This application was resisted by the sitting member, and the county court passed an order restraining the clerk of the county court from allowing any such inspection. Subsequently the judge of the circuit court, to whom the contestant applied to take proofs, under the statute of February 19, 1851, which expressly clothes such judge with power to require of any person, under severe penalties, the production of any "paper or papers in his possession pertaining to said election," peremptorily commanded the production of these ballots, and they have thus been made a part of the proofs, and are to be found in said document No. 8, before referred to. The statutes regulating the election of members of Congress require that the judges of election shall, before entering upon the duties of their office, take an oath that they will faithfully perform those duties, and that "a certificate of their qualification shall be returned with the return of the votes." To be a qualified voter in this district, one must be a free white citizen of the United States, of twenty-one years of age, a resident of the State of Missouri one year next preceding an election, the last three months of which being in the county or district in which the vote is offered. A person otherwise qualified may vote in a township of which he is not a resident on taking an oath that he has not voted and will not vote in any other township during that election.

The evidence discloses a large and wholly unexplained increase of the aggregate vote for member of Congress at this election over that cast at a warmly contested and spirited canvass for the same office at the last election, two years before. At that election the aggregate vote was 13,865, while at this it swelled to 19,356—an increase of 5,491. It further shows that while Mr. Blair, who was a candidate at both elections, and the candidate of the American party, each received the full amount, and a slight increase of the vote cast for them respectively at the last election, nearly the entire amount of this great accession of votes, viz: 4,776 votes, was cast for the sitting

member over those cast for the candidate of his party at the last election. The 13,865 votes cast at the last election were divided as follows: For Mr. Blair, the candidate of the "free democracy," 6,035 votes; for Mr. Kennett, the candidate of the American party, 5,549 votes; for Mr. Reynolds, the candidate of the "national democracy," 2,281 votes. At this election the 19,356 votes were cast as follows: For Mr. Blair, 6,631 votes; for Mr. Breckinridge, the candidate of the American party, 5,668 votes; and for Mr. Barrett, who was the candidate of the national democracy, 7,057 votes. Thus it will be seen that while the vote for Mr. Barrett, over that cast for the candidate of his party at the last election, had increased 4,776 votes, there had been no corresponding falling off either in the vote of Mr. Blair or in that of the candidate of the American party. On the other hand, the vote for these two gentlemen had also increased—that of Mr. Blair 415 votes, and that of Mr. Breckinridge 119 votes. While a moderate increase of votes is readily accounted for by the natural increase of population and growth of the city, yet so great an increase in two years must, in the opinion of the committee, if honest, be traceable to some known, distinct, and palpable cause which might, if it existed, have been easily pointed out and made apparent during the investigation. It is evident that the large accession of votes to the sitting member over those cast for the candidate of his party at the previous election did not result from a change of party relations among the voters. If it had been there would have been a corresponding falling off from the vote for one or the other of the candidates of the other parties, yet they each not only maintained but increased their former vote.

If such increase had been attributable to increase of population, it must have been, under the law requiring a year's residence in the State before voting, from an addition to the population which had arrived in the city a year previous to the day of the election; if from out of the State or from some other part of the State of Missouri, three months at least before that day. The presence of a new voting population of 5,000, with all the families, and other indications of their existence which move with them wherever they go, and stop with them wherever they abide, could hardly escape notice for a year or even three months. It could hardly be expected, either, that any such actual and *bona fide* accession to the voting population would have cast its entire strength for the candidate of one party alone. To some extent such increase would naturally be expected to distribute itself somewhat among all parties. The committee have not been pointed to any instance elsewhere of so great an increase to the voting population of such a territory in so short a time, without any known cause or source, or special indication of its presence, and all of one political faith, and casting its first vote in a body for one of three different political candidates all at the same time and place equally active in canvassing for votes. This district is divided into thirty-five election precincts or sub-districts, and any honest increase of votes arising from natural increase of population would generally find itself distributed among them all; yet it is nearly all found in seven or eight out of the thirty-five.

These remarkable features of this case, disclosed in the outset, led the committee early to direct a most scrutinizing inquiry into the manner of voting, the qualification of voters, the conduct of the judges of elections, and of others in these precincts. The evidence shows that great irregularities existed at nearly all of them; and just in proportion as these irregularities were frequent and glaring, did the increase of vote for the sitting member over the vote cast for the candidate of his party two years before show itself. In many of them it does not appear that the judges took any oath of office before proceeding to open the polls. One judge could neither read nor write, had been convicted by a jury of a conspiracy to cheat; another was deaf; a third threatened with violence those who sought to challenge votes, and, instead of refusing to receive the votes of men who declined to be sworn as to their qualifications, as was his duty, endeavored to persuade them to vote without. Men unknown in the precinct where they offered to vote were permitted to cast their ballots without question, and without first taking oath, as the law requires, that they "had not voted and would not vote in any other precinct in the district." Violent and tumultuous crowds surrounded the polls, and at times had such possession of them, and power over the judges, as to render it almost, if not quite, impossible for any one to approach the polls or cast his vote, unless he carried a ballot for the sitting member. Scenes of violence occurred about the polls; altercations arose, and blows passed between the judge of the election and the challenger outside. Men, strangers in the precinct, openly proclaimed that they "had come there to make every Irishman vote the Barrett and Hackney ticket," and were themselves permitted to vote the same ticket without question; public officers, who were upon the same ticket with the sitting member, thus voted, mingled with and countenanced and encouraged these proceeding. One of the judges of the county court, which afterwards passed an order forbidding its clerk to permit the contestant to inspect the ballots thus cast, was upon the same ticket with the sitting member, and received with him the votes thus cast, and then subsequently attempted their concealment. Men temporarily employed upon public works, and having no legal residence in the district, were led by their employer to the number of twenty-five or thirty in a body to one poll to vote, and, when challenges and objections prevented more than five or six of them from casting ballots for the sitting member at that precinct, the remainder were taken to another precinct, and, in the language of their employer, "put through." Open and shameless proclamation of a $1.25 for a vote for Barrett was made in the crowd about the polls. Liquor was freely used, and booths for its sale or gratuitous distribution were kept in violation of law in the vicinity of the polls. And when a man in the early part of the day, upon being brought to the polls refused to "swear in" his vote, was taken away and plied with liquor, and again brought up and again refused to swear in his vote, was again taken away, and late in the day was brought up a third time stupified with liquor, and the judges administered the oath to him in that state, and took the vote which he had twice before refused to swear he was qualified to give. Voters were interfered with when in the act of voting their choice, and the ballot snatched away and one for the sitting

member put in its place. As if preparatory for, and in anticipation of, these scenes at the polls, large numbers of men were employed a few days previous to the election upon the county roads, among whom there was the understanding that they were expected on the day of election to vote the ticket upon which was the name of the sitting member and of Judge Hackney, who subsequently attempted, by the authority these votes gave him, to shield with the power of his court these same votes from investigation. The evidence shows that these men thus employed were strangers, without residence in, and unknown to those who were residents in, the precinct and best acquainted with its inhabitants. One judge, in the face alike of his duty and the constitution of the State, openly declared in the hearing of the crowd at the polls, which seemed already sufficiently inclined to avail itself of any such suggestion, that "if a man who had worked six months on a railroad in Missouri hadn't a right to vote he didn't know who had." These laborers and others recently known in Illinois and elsewhere, but not known at the place of voting, were seen immediately after the election taking leave, with carpet bag in hand, and have disappeared altogether from the vicinity. These irregularities and violent proceedings were shown to exist to a great extent in the following precincts, viz:

The 32d precinct—Gravois coal mines.

The 11th precinct—Carondelet.

The 28th precinct—Eastern poll, ninth ward.

The 29th precinct—Western poll, ninth ward.

There were the same scenes at other precincts, though perhaps not as glaring as at those just enumerated. An examination of the poll-books and abstract of votes at these precincts, which are a part of the proofs, discloses evidence of these irregularities and the facility they afforded for fraudulent voting. The conviction is forced upon the committee that this facility was eagerly and largely availed of, if it were not the cause and temptation to much of the fraudulent voting. In several of these precincts it does not appear that any oath had been taken by the judges of election, which, if nothing else, might be supposed to be some check upon a disposition to disregard or overlook the requirements of law. There is likewise the same omission in some instances of any evidence that the clerks, whose duty it is to keep a record of all the votes cast, had been sworn according to law. Poll-books coming without these sanctions from out the tumultuous scenes and angry strife which reigned at the precincts here mentioned, in which the officers who kept them as well as the outside crowd participated, fail in the outset to command that confidence in their accuracy which ordinarily attaches to the proceedings of public officers. The committee find on inspection, in frequent instances, too many, to leave it to be imputed to accident or mistake, ballots with the same number reported upon them which had previously been put upon other ballots and counted in the result. Whenever this is done, it must have been either because the voter cast two votes at once, with the connivance of the judge and clerk, who put his number upon the two ballots at the time they were cast, or some one having access to the ballot-box, and knowing what number had already been voted, puts upon a ballot a

number already used, and drops it into the box in the expectation that the ballot will be counted and the repetition overlooked in the general result. Such instances could not arise from mistake of the judge or clerk in honestly putting upon one voter's ballot the number which they had previously used upon another, because the same number thus put upon the ballot must also be put against the name of the voter upon the poll-books, and there would consequently appear upon the poll-books the names of two or more different voters with the same number prefixed to them, and the mistake would be harmless. It is difficult to explain this consistently with the integrity of all the officers conducting the election. Such was the looseness and irregularity existing at many of the polls, that any one having access to the ballot-box could accomplish it all. Such evidences materially impair that confidence which the committee would gladly have placed in these returns, and were not without their effect in further investigation of the character of votes which were challenged as fraudulent. The poll-books show that the same person cast more than one vote, sometimes more than two, sometimes at the same precinct, and sometimes at different ones in the city, multiplying in this way his vote manifold in the general result. A comparison of the vote in these four precincts in 1856 and 1858, the election here contested, will show which candidate profited by the fraudulent voting, if any existed. The following is a table showing the vote for each candidate at both elections in each of these precincts:

Comparison of the vote for representative to Congress in 1856 *and* 1858, *in four precincts challenged by the contestant.*

Gravois precinct.

1856—Kennett, (American,) 47; Reynolds, (democrat,) 4; Blair, 4.
1858—Breckinridge, 24; Barrett, 153; Blair, 7.

Carondelet.

1856—Kennett, 114; Reynolds, 44; Blair, 104.
1858—Breckinridge, 66; Barrett, 286; Blair, 159.

East precinct, 9th ward.

1856—Kennett, 240; Reynolds, 47; Blair, 271.
1858—Breckinridge, 234; Barrett, 492; Blair, 196.

West precinct, 9th ward.

1856—Kennett, 31; Reynolds, 102; Blair, 267.
1858—Breckinridge, 46; Barrett, 418; Blair, 224.

Total—1856—Kennett, (American,) 432; Reynolds, (democrat,) 197; Blair, 646.
1858—Breckinridge, (American,) 370; Barrett, (democrat,) 1,349; Blair, 586.

From this table it appears that, while there was no corresponding falling off of the vote of either the American candidate or Mr. Blair, (the one having lost 62 votes, and the other 60 votes only,) there was an increase of votes for the sitting member over that cast for the democratic candidate at the last election, in these four precincts alone, of 1,152 votes—nearly twice his whole majority. There was an absolute increase in these four precincts alone of 1,030 votes in an aggregate vote of only 2,305, all of which were cast for the sitting member. Had there been a corresponding increase in each of the thirty-five precincts in this district, the whole vote of the district would have been 26,453 votes against 13,765 at the last election, or a few votes only short of double. The whole vote cast for the sitting member would have been 16,458 against 2,281 votes cast for the candidate of his party at the last election—an increase of more than seven-fold—and the majority for the sitting member would have been 10,984 votes.

The committee have sought by this brief summary to present to the House, as clearly as they are able, without reciting in detail the evidence upon which the contestant urged before them, that the entire polls in several of the precincts to which that evidence more particularly applied, viz: the two precincts of the 9th ward, the "Harlem House" precinct, the Carondelet precinct, and the "Gravois coal mine" precinct, should be rejected as so utterly and entirely unreliable that the truth cannot be deduced from them. The precedents of Congress justify the rejection of polls where the judges of election or clerks neglect or refuse to take the prescribed oath of office.—(See McFarland *vs.* Purviance, Contested Election Cases, page 131; same *vs.* Culpepper, ibid., 221; Easton *vs.* Scott, ibid., 281.) Of the precincts above named, there was no evidence returned with the return of votes, nor before the committee in any shape at the hearing, that the judges of election were sworn in either the Harlem House precinct or the Gravois coal mine precinct; nor was there any in respect to the G. Sappington precinct. Had it appeared from the evidence that the election had been fairly conducted at these precincts, and there were no traces of fraud, no taint of the ballot-box, the committee would not have been willing to have recommended a rejection of these polls. The honest electors should not be disfranchised and their voice stifled from a mere omission of the officers of election to take the oath of office; but where, as in the case of the election districts now under consideration, gross frauds are made to appear, some of them of such a character as necessarily to complicate the officers of the election themselves; where the whole ballot-box becomes so tainted as to be wholly unreliable, and it is next to impossible to ascertain what portion of the poll returned is an honest vote; when one judge has been convicted by a jury of a conspiracy to cheat, another can neither read nor write, a third is so deaf as to be incompetent from physical infirmity to act; where one mingles in the fights of the crowd, encourages illegal voting, forgets the obligations of his position in the zeal and passion of the partisan, it is believed by the committee that they could not do less than require of the sitting member to prove that these officers had conformed to the law,

before the votes they had (under these circumstances) returned should be counted. In this connexion they cite a late case of contested election in a court of law, the case of Mann *vs.* Cassiday, for the office of district attorney in the city of Philadelphia, at an election held October 14, 1856, contested in the court of quarter sessions in that city. The facts in that case, as summed up by the presiding judge, are so parallel with those disclosed in this case, that the committee take the liberty to append them to this report in an appendix, marked A, and solicit the attention of the House thereto. A reading of the evidence, as thus summed up, and as contained in the proofs in this case, would almost lead to the conclusion that the one had been taken as the pattern of the other. After summing up the testimony at length, the judge concludes: "As the case now stands before us we should be derelict in our duty did we not unhesitatingly express our conviction that the acts of the officers in the election divisions to which we have referred, in the receipt and recording of votes, are so utterly and entirely unreliable that the truth cannot be deduced from any records or returns made by them in relation thereto." And he adds: "Had we not erased from the petition the specifications alleging gross frauds and irregularities on the part of the election officers in the divisions referred to, a different course would certainly have been adopted The entire proceedings were so tarnished by the fraudulent conduct of the officers charged with the performance of the most solemn and responsible duties that we would not only have been abundantly justified, but it would have been our plain duty to throw out the returns of every division to which we have referred."

This language should not be applied indiscriminately to all the election officers in the precincts under consideration; there were honorable exceptions; but the election at these several places was so far under the control of men to whom this language is fitly applied, that the polls justly come under this condemnation. The committee are aware that it is sometimes held that public officers are presumed to be qualified, and to have taken such oaths of office as the law requires, and must be taken and deemed to have done so, in the absence of proof to the contrary; but in this case the law of Missouri expressly requires that "a certificate of their qualification shall be returned with the return of the votes." It was expressly charged as a ground of contest that they had not been sworn, (see 19th charge.) It would have been a matter of the greatest ease to have proved the fact, if it had been a fact, by summoning any one of these officers as a witness; yet the sitting member, though he called many other witnesses to other points, at no time examined either of the fifteen men officiating at these precincts, or any other person, as to this fact.

More than a month after the hearing before the committee had closed, just forty days after the parties had been fully heard upon all the points involved in the case, the sitting member presented to the committee two *ex parte* affidavits, which, if true, would show that the judges of election at one of the precincts of the fifth ward, and at the Harlem House, were actually sworn, and asked the committee to either receive them as evidence or grant a delay and authority to put the evidence in the form of depositions. But it appeared strange to the

committee that when the disqualification of judges had been made a special ground of contest nearly two years before, and a thousand pages of evidence had been taken, and the person who, by these affidavits, administered the oath of office had been a witness for the sitting member, and had never been asked the question, and the parties had been heard before the committee at great length and to their content—it appeared strange that forty days after all this had been suffered to elapse before the existence of any such evidence had been suggested. The committee declined to receive the *ex parte* affidavits, and saw no reason for granting further delay. It will be seen, by the conclusion at which the committee arrived, that the result would have been the same, whether the affidavits were admitted or not. As to the precinct at the court-house in the 5th ward, there was no allegation in the notice of contest that the judges were not qualified, and the poll is not rejected by the committee; and whether the Harlem House precinct be rejected or not, the result would be the same. But the offer of these affidavits to show that the judges at a precinct not contested on this ground, and another small one not affecting the general result, were qualified; and the omission of any such offer as to those precincts which would control the result, and were made a special ground of contest because of this omission to qualify, has forced the conclusion upon the committee that no evidence could be produced to show that the judges of election at the Gravois coal mine precinct, and of the G. Sappington precinct, were ever qualified, and that the omission to return a certificate was not accidental.

Yet, had it been made to appear that everything else had been regular and fair at these polls, could the committee have brought themselves to believe, from evidence in the case, that the returns had expressed the wish of the people at these points, untainted by fraud or fraudulent votes, they would have been constrained to have given the sitting member the benefit of such presumption in the absence of a compliance with the law, or the benefit of the principle that the acts of officers *de facto* are valid as regards the public, and third persons who have an interest in their acts, which has lately been applied to a case of this kind in the State of New York.—(See The People *vs.* Cook, 14 Barb. Reports, 245.)

In the case of Joseph Draper *vs.* Charles C. Johnston, in the 22d Congress, (Contested Election Cases, p. 701,) the Committee of Elections state the law, as your committee believe correctly as follows:

"The neglect by the sheriff or other officer conducting the election to take the oath required by law vitiates the poll for the particular precinct or county, and the whole votes of such precinct or county are to be rejected. The legal presumption is, that the oath required has been taken, every officer being presumed to have done his duty, and that the *onus* is thrown upon the party taking the objection to show the neglect or omission; but as the law of Virginia requires that the oath shall be duly returned by the magistrate before whom it is taken, and filed in the clerk's office, a certificate from the clerk that no such oath is filed will be sufficient *prima facie* (notice of the objections being previously served upon the opposite party) to throw the burden of proof upon the party claiming the vote."

In this case the law of Missouri requires that the certificate of the qualification of the judges of election shall be returned with the return of the votes. An inspection of the record shows no such return at the precincts now under consideration. It was distinctly alleged, as a ground of contest, that these judges had not taken the oath, and the committee have come to the conclusion that the burden was upon the sitting member, claiming these votes, to show that these officers had actually taken the required oath, or to have shown affirmatively that the votes he asked to have counted for him at these precincts, if the officers were not qualified, were actually given by *bona fide* voters; and he, not having shown either the qualification of the officers or the fairness of the vote, but the contrary appearing, the votes at these precincts, viz: Gravois coal mines, G. Sappington's house, and Harlem House, are rejected.

The contestant further charged, as a ground of contest, "that in every precinct in the city there were illegal votes given to you [the sitting member] by minors, non-naturalized foreigners, non-residents, persons having no sufficient residence, and that there was also double voting for you, and voting for you by persons under fictitious names, there being no such persons in fact residing in this congressional district."

The sitting member, on the other hand, in his answer, among other charges, makes a similar one, in respect to illegal voting, against the poll of the contestant, nearly as broad and in much the same language.

These charges imposed upon the committee the labor of investigating the entire poll-books of the district, and of examining into the qualifications of voters in every one of the thirty-five precincts. The evidence is voluminous, thrown together at the printing office in a book of near one thousand pages, without index or order. Nice questions of law and fact were involved in the conclusions at which the committee arrived, upon which learned and lengthy arguments were submitted by the parties and their counsel. The committee are conscious of their liability to mistake in the examination of so much testimony, and to err as to its legal bearings and just weight. They have given to it much time and their just judgment; and now, invoking an attentive perusal by the House, for itself, of the evidence which is before them for their consideration as well as the committee, they submit their conclusions.

Of the voters whose qualifications have been challenged on both sides, and which the committee decided to reject as disqualified, the evidence touching some of them was from their own lips directly, either testified by themselves or by others as their admissions. This latter testimony was admitted in the case of Vallandigham *vs.* Campbell in the last Congress, and has been admitted in many other cases in this country and in England, and was not strenuously opposed in this case. Many voters were charged to be non-residents—some of the State, and more of the particular precinct in which they voted. The very nature of the charge shows the difficulty of the proof. It involves to a great extent proof of a negative respecting persons whose names are not even known; and, except in the few instances where there may be a personal acquaintance with the man in another State or in a distant

part of the same State, the proof can hardly be, from the nature of the case, of a positive and direct character. In these cases the committee based their conclusion upon evidence that these men had never voted in that precinct before; were strangers to the old residents of the precinct, to individuals who had acted as judges and clerks of election for a great number of years; had no home or business in the precinct known to those best acquainted with its homes and business, and that they have disappeared from the day of election, their whereabouts not having been discovered since even by census-takers. Some of these precincts are small, casting ordinarily but two or three hundred votes; and men living within their limits for ten, fifteen, and twenty years see the vote doubled and sometimes tripled by the presence of men seen for the first and last time on the day of election. With this evidence on the one side, so easy of rebuttal by the production of the voter, if a resident, or of some one who knew him to be a resident, yet left uncontradicted, the committee could come to no other conclusion than to reject all such votes as illegal.

Another class of voters challenged was unnaturalized persons, those of not sufficient residence in the State or precinct, or minors, or having some other disqualification, though not unknown to the witnesses, as in the case of non-residents. As to the qualification of this class of voters, the admission of the voter, the testimony of his acquaintances and family, of those who had heretofore acted as officers of election, and circumstantial testimony of various kinds, was admitted for what it was worth. In addition to this testimony was that from another source, which was strenuously resisted by the sitting member on two grounds: first, that evidence from this source was not competent in an investigation of this kind; second, that the method of producing it before the committee was in conflict with the well-established rules of evidence. The evidence alluded to was this: On the 13th day of August, 1858, the city council of St. Louis passed an ordinance to take the census of the city provided by its charter and previous ordinances. A copy of this ordinance will be annexed to this report. For this purpose the city was divided into districts, and census-takers were appointed for each census district. They were instructed, in addition to an enumeration of the inhabitants, to ascertain and report various other matters of statistical information; among which was the nationality of the inhabitants found within their respective precincts, and whether naturalized or not, if foreign born; how long resident, &c. It was to the evidence which the reports of these census-takers disclosed that the sitting member strenuously objected. First, because under no circumstances could they be evidence of facts which they purport to contain; and, secondly, because of the manner of bringing that evidence before the committee.

The committee answer, that, so far as the census-takers themselves were witnesses, testifying to the facts contained in their report obtained by themselves, which was the case in very many instances in which this kind of testimony was offered, it is the ordinary case of men making memoranda, or writing down what they know, and then coming into court and testifying to the facts thus acquired, refreshing their memory from the paper thus made out by them. Nor is there

any objection to others comparing the poll-books with those memoranda thus verified, and testifying to the result of the comparison. But these reports of the census-takers, now in the archives of the city, are official documents, and are *prima facie* evidence of the facts they contain. They are like the land lists of Virginia, which are *prima facie* evidence that the men whose names are in them, purporting to be land owners, were voters, (see Robert Porterfield *vs.* William McCoy, Contested Election Cases, page 267; George Loyall *vs.* Thomas Newton, ibid., page 520;) or the lists of taxables in Pennsylvania, which were used as evidence for the same purpose in the case of Mann *vs.* Cassidy, before referred to, and votes of men not found on these lists rejected. And the poll-books are always *prima facie* evidence, both of the fact that a man has voted and of the qualification of the voter, without evidence to rebutt it, stand as the fact.—(See Porterfield *vs.* McCoy, Contested Election Cases, page 267, and 1st Peckwell, on Contested Elections, English, page 208, and 2d Peckwell, page 270.)

Nor is there any well-grounded objection to the manner of producing this testimony before the committee; so far as it was brought before the committee by the census-taker himself, when testifying to the facts contained in his report, the objection has been already sufficiently answered. And all the evidence so introduced has been from men swearing that the paper exhibited by them is an exact copy *pro tanto* of the censue return. In some instances the commissioner taking the deposition has annexed the identical paper thus sworn to to the deposition, and in others he has himself instead written out their contents in the answer of the witness. These extracts from the reports of the census-takers, used by the committee, thus become *pro tanto* examined copies. And this is one method of producing copies laid down in the elementary books.—(See Greenl. on Evidence, 1st vol., secs. 483, 484; 1 Phillips on Evidence, p. 432.) In the case of Valandigham *vs.* Campbell, decided in the last Congress, the secretary of state examined the contents of the returns from the several counties composing the third congressional district of Ohio, computed an abstract of them all, and then certified, under his official seal, not a copy of any record return on file in his office, but the abstract, which had been the result of his own examination of the contents of another paper or papers, and that certified abstract was used as evidence. This was carrying this point much further than the admission of the evidence here offered. The sitting member has also resorted for evidence, both in challenging votes and in rebutting testimony offered by contestant on other points, to this very census, to the introduction of which he objected. The committee, for the foregoing reasons, admitted the testimony, giving to it such weight as its own intrinsic merit and other corroborative testimony in the case, in their opinion, entitled it.

The testimony derived from the census was greatly strengthened and corroborated by testimony from other and entirely independent sources, and it, in turn, corroborated other documentary and oral testimony, showing the accuracy and reliability of each. It gave the names, streets, and number of a large number of persons put down as

"not naturalized," with "first papers only;" "not a resident in the State a year," or "not in the precinct three months," &c. Other witnesses, old citizens of the precinct, familiar with its voters, judges or clerks of elections in many previous years, made out similar lists from the poll-books and their own personal knowledge, and when compared they were found to corroborate each other. The same was found true when comparing the statement of their own qualifications, when made by the individual voter to witnesses who testified to them before the commissioner.

The evidence pointed, in very many instances, to the individual voter, by name, street, and number. The voter, or his neighbor, could have been produced in an hour, and his qualifications shown in reply. This was done in some instances, thus adding to the weight of the evidence as to those which remained uncontradicted.

From the evidence derived from all these sources, the committee have endeavored to purge and sift the polls on the one side and the other, and to deduct from the vote of each party such as in their opinion have been satisfactorily proved to be fraudulent, as well in the precincts they have decided to reject altogether, as in the others. They have appended to this report the name of each voter so stricken from the poll, with the number of the ballot he cast attached, together with the precinct in which he cast his ballot. A reference to the abstract of ballots will show from the vote of which party each name is to be deducted. It is utterly impracticable to recite in this report, in connexion with each voter's name, the testimony upon which the determination of the committee in respect to it is based. Such a course would be but the reproduction, for the perusal of the House, of the great mass of testimony already before it. They point out, without repeating, the testimony, and state the principles they have applied to, and the weight they have given it.

The committee have added to the vote of Mr. Blair eight votes which were thrown out by the judges of election in the western precinct of the first ward because they were upon a ballot which was headed, "For Congress, Francis P. Blair;" then followed, "For the State senate," ———; then right over the list of candidates for representatives to the State legislature was, in large letters, "For Representatives for Congress;" then followed thirteen names. The committee entertain no doubt that the voters intended to vote for Mr. Blair for representative in Congress, and, according to a well established rule, they have awarded him these votes.—(See Turner *vs.* Baylies, Contested Election Cases, p. 234.)

The committee also added to the vote of Mr. Blair two votes of persons, Asa A. Jones and Frederick Ritschy, who testify that they voted in a particular precinct for him, and it appears that they were not counted for him. There does not appear to be any good reason for doubting their testimony.

They have also deducted from the poll of the sitting member six votes cast at Mehl's store, by persons whose names could not be ascertained, but who were not, in the opinion of the committee, qualified voters. They have deducted from the poll of the contestant, and added to that of the sitting member, the votes of J. R. Washington and John

Fitzmaurice, who testify that they voted for the sitting member, and it appears by the abstract that they were counted for the contestant. There were others who so testified, but the abstract shows that they were counted as they testified they voted. The sitting member also showed by the census returns that William Moeller was not naturalized; but as the abstract shows that he was counted twice, Nos. 439 and 816, once for the sitting member and once for the contestant, no deduction is made from the poll of either on account of this vote.

The committee have, in addition to the foregoing corrections of the poll on both sides, after a careful consideration of the whole testimony, rejected from the count of both the sitting member and the contestant, as in their opinion cast by persons not qualified to vote, both in those precincts they have decided to reject altogether and in the others, votes in the several precincts, as follows:

The name of each voter and the number of his ballot, and the page of the abstract where it appears for whom he voted, are all given in the appendix.

From the poll of the sitting member they have rejected at—

Carondelet precinct	60	votes.
Second ward, eastern precinct	16	
Third ward, eastern precinct	21	
Fourth ward, eastern precinct	150	
Fourth ward, western precinct	27	
Sixth ward, eastern precinct	27	
Sixth ward, western precinct	3	
Seventh ward, eastern precinct	51	
Eighth ward, eastern precinct	86	
Seventh ward, western precinct	3	
Eighth ward, western precinct	5	
Ninth ward, eastern precinct	50	
Ninth ward, western precinct	30	
Tenth ward, eastern precinct	35	
Tenth ward, western precinct	31	
Mehl's store	3	
Central House	3	
	601	
Gravois coal mines	61	
Harlem House	1	
Total	663	

From the poll of the contestant they have rejected at—

Second ward, eastern precinct	9	votes.
Third ward, eastern precinct	6	
Fourth ward, eastern precinct	17	
Fourth ward, western precinct	1	
Ninth ward, eastern precinct	3	
Ninth ward, western precinct	2	

Carondelet	15	votes.
Not known where voting	2	
Total	55	

There were many other votes challenged on each side, in reference to some of which the committee were satisfied that they were cast by legal voters; in others they were left in doubt by the evidence; in all which cases the votes were left as counted.

From the whole investigation the committee deduce the following results:

If the Gravois coal mines precinct, the G. Sappington precinct, and the Harlem House precinct be rejected, in accordance with the conclusion of the committee heretofore given, and the illegal votes cast on both sides in the other precincts be deducted, the result will be as follows, viz:

For Mr. Blair, official vote		6,630	
Deduct clerical error, eastern precinct, 7th ward	180		
Deduct erroneous count of votes cast for Barrett	2		
Deduct illegal votes rejected by committee	55		
Deduct votes cast at Gravois coal mines	7		
Deduct votes cast at G. Sappington's	6		
Deduct votes cast at Harlem House	16		
		266	
		6,364	
Add votes thrown out at western precinct, 1st ward	8		
Add votes not counted	2		
		10	
			6,374
For Mr. Barrett, official vote		7,057	
Deduct names unknown at Mehl's store	6		
Deduct illegal votes rejected by committee	601		
Deduct votes cast at Gravois coal mines	153		
Deduct votes cast at G. Sappington's	42		
Deduct votes cast at Harlem House	51		
		853	
		6,204	
Add votes erroneously counted for Blair		2	
			6,206
Majority for Blair			168

If the *ex parte* affidavit in reference to the Harlem House precinct be received as evidence, and it should be considered as sufficiently proved by the sitting member that the officers at that precinct were qualified, the result would be as follows:

For Mr. Blair, official vote		6,630	
Deduct clerical error, eastern precinct, 7th ward	180		
Deduct erroneous count of votes cast for Barrett	2		
Deduct illegal votes rejected by committee	55		
Deduct votes cast at Gravois coal mines	7		
Deduct votes cast at G. Sappington's	6		
		250	
		6,380	
Add votes thrown out at western precinct, 1st ward	8		
Add votes not counted	2		
		10	
			6,390
For Mr. Barrett, official vote		7,057	
Deduct names unknown at Mehl's store	6		
Deduct illegal votes rejected by committee	602		
Deduct votes cast at Gravois coal mines	153		
Deduct votes cast at G. Sappington's	42		
		803	
		6,254	
Add votes erroneously counted for Blair		2	
			6,256
Majority for Blair			134

If, however, there should be deducted from neither poll any votes for failure of officers of election to qualify, but only those which, in the opinion of the committee, were cast by persons not qualified to cast them at each of the precincts without regard to the proceedings being conducted in conformity with law, the result would be as follows, viz:

For Mr. Blair, official vote		6,630	
Deduct clerical error, eastern precinct, 7th ward	180		
Deduct erroneous count, votes cast for Barrett	2		
Deduct illegal votes rejected by committee	55		
		237	
		6,393	
Add votes thrown out, western precinct, 1st ward.	8		
Add votes not counted	2		
		10	
			6,403
For Mr. Barrett, official vote		7,057	
Deduct names unknown at Mehl's store	6		
Deduct illegal votes rejected by committee	663		
		669	
		6,388	
Add two votes erroneously counted for Blair		2	
			6,390
Majority for Blair			13

It will be seen that whichever of these conclusions shall be arrived at by the House the result is the same, and the contestant is entitled to the seat.

The committee, therefore, recommend the adoption of the accompanying resolves:

Resolved, That Hon. J. Richard Barrett is not entitled to a seat in the thirty-sixth Congress as a representative of the 1st congressional district of Missouri.

Resolved, That Hon. Francis P. Blair, jr., is entitled to a seat in the thirty-sixth Congress as a representative from the 1st congressional district of Missouri.

APPENDIX.

QUALIFICATION OF VOTERS.

Section 10, *Article* 3, *Constitution of the State of Missouri.—Qualifications of Electors.*

SECTION 10. Every free white male citizen of the United States, who may have attained the age of twenty-one, and who shall have resided in this State one year before an election, the last three months whereof shall have been in the county or district in which he offers to vote, shall be deemed a qualified elector of all elective offices: *Provided*, That no soldier, seaman, or marine in the regular army or navy of the United States shall be entitled to a vote at any election in this State.—(P. 67, Stat. Missouri, vol. 1.)

SEC. 43. When any person offers to vote in a township of which he is not a resident, if he possess the necessary qualifications of a voter, he may vote on taking an oath that he has not voted and will not vote in any other township during the present election.—(P. 704, Stat. Missouri.)

[No. 4249.]

AN ORDINANCE providing for taking the census of the city of St. Louis.

SECTION 1. *Be it ordained by the city council of the city of St. Louis*, That the mayor shall appoint ten competent persons, who shall act in conjunction with the city assessors, whose duty it shall be to proceed immediately to take the census of the city of St. Louis, in conformity with existing ordinances.

SEC. 2. So much of ordinance numbers three thousand four hundred and thirty-nine and three thousand five hundred and seventy-three as conflict with section one of this ordinance are hereby repealed.

Approved August 13, 1858.

Oath to be first taken by judges of election.

"I do swear (or affirm) that I will impartially perform the duties of judge of the present election according to law and the best of my ability, so help me God."

Laws of Missouri, 1825.

"The several oaths required to be taken by this act shall be administered by a justice of the peace, if any shall be present; but if there should be no justice of the peace present, the oath shall be administered by any one of the judges; and in either case a certificate of their qualifications shall be returned with a return of the vote."—(P. 350.)

SECTION 18. All elections in the city and county of St. Louis shall be by ballot, and shall continue for one day and no longer, and shall be conducted in all respects as provided by the law now in force regulating elections in said county.

SEC. 19. At all elections by ballot, it shall be the duty of the judges of election in receiving the ballots and registering the names and number of the voters, to place the number which shall be recorded opposite the voter's name on the list, also on the ballot voted by him, before depositing the same in the ballot box.—(Page 700, vol. 1.)

A.

William B. Mann vs. *Lewis C. Cassidy. Contest for the office of district attorney, in the city of Philadelphia, at the election October* 14, 1856. *Summing up of Judge Thompson, page* 425.

Judge Thompson says: "We have treated this as a question relating to the validity and efficiency of the evidence offered as applicable to the case before us; but the additional testimony bearing upon the whole conduct of the election, in most if not all the divisions (election districts) referred to, would justify a much more unfavorable conclusion. It is in direct testimony that, at the polls of some of the said divisions, the election officers refused to discharge their sworn duties, and admitted every offered vote, in spite of remonstrance or challenge.

"In the sixth division of the fourth ward seventy-three votes were proved to have been received, in cases where either the right to vote was objected to by a qualified citizen, or the name of the voter was not on the list of taxables, without oath or proof being required.

"The witness adds: 'That McQuaid put all the votes in the box without waiting for the inspectors to decide,' and that the judge kept the list of taxables, which was very seldom looked at. In more than one instance, drunken men were allowed to vote; and 'one man,' says the witness, 'was so drunk that they had to hold him up.' Forty-eight names were added to the list of taxables, but for what reasons are not stated.

"In the seventh division of the fourth ward the law was openly violated by the election officers. They refused to take notice of objections made to voters. Four uncontradicted witnesses—Levy, Sigman, Neff, and Hackett—testify to the fact that numerous challenges were made without effect. The inspectors required no one to be sworn, or to produce proof; and, in answer to challenges made, one of the in-

spectors would reply 'General Challenge don't live here.' One witness, Levy, says: 'No person was sworn that day in support of the voters challenged, but some few on their taxes.' Neff also testifies that no vouchers were produced to prove residence; that four persons only were sworn to prove tax receipts, and that challenges were entirely disregarded. He further states, that he made challenges in consequence of the manner the voters were shoved up to vote; some were shoved up, and others would call out their names for them. It is in clear proof that a vote, though challenged, was received in the name of William West, a citizen who had died a considerable time previously.

"In the eighth division of the fourth ward the list of taxables was not kept by the inspectors. Mr. Mathieu, an inspector, was examined, and testified 'that the judge, John McGonigel, took the book, at the opening of the poll, by McMullen's directions, while he (the inspector) received the votes; of course, no legal evidence can be derived therefrom.' Votes were here also received from persons not on the list, without being sworn as to evidence; 'and,' says the witness Matheiu, 'the judge in some instances said the name was in the list, and when I looked I could not find it; not more than eight or nine proved their residence during the day.'

"At this poll also occurred a transaction which, if truly stated, ought to cover all parties concerned with undying shame. A more outrageous attack on the purity of the ballot-box could not be conceived. D. M. Mathieu, the same inspector, testifies that upon a difficulty arising within the room as to the reception of the vote of a man who gave the name of Patrick McQuaid, an individual who was only outside called to Dornan, the other inspector, to put the ticket in the box, he said to the witness 'if you don't put that ticket in the box I will knock your head off;' after which he ran into the house and jumped over the partition which enclosed the election officers and on to the table among the books and papers, his foot being placed on the assessors' list. He threatened Mathieu several times, shook his fist at him, and said he would fix him before he left the polls. After he had been in a few minutes, one of the clerks walked up and pushed the ticket into the box. The intruder then got down from the table, and walked out of the door. Among honest men such a transaction could not have been permitted to pass unnoticed; and inspectors who thus guard the ballot-boxes cannot expect that their sworn returns 'will receive any consideration from a judicial tribunal.' The only witness called to rebut this testimony was Patrick McQuaid, the party whose offer to vote caused the dispute. He says that he handed in his ticket, they looked to see if his name was on the book, and they took his vote. That was all that was done. And, upon cross-examination, he says: 'I did not know who the judge of the election was; I did not see Dornan that I know; a man inside took my ticket; I didn't go away until he told me all was right; I was not challenged, not asked for a voucher; I saw McMullen there; did not speak to any one inside.'

"How far this testimony affects the evidence of the inspector (Mathieu) as to what occurred inside may be a question, and we leave it

with the single remark that none of the other persons present were called to testify on the subject.

"In the 9th division of the second ward, Mr. Costello, one of the inspectors, says 'the votes on this list (a paper in pencil) were taken without examining the list of taxables,' and as a reason he says the other inspectors put the ballots in the box so fast that he had no time to examine it. He further says that the kind of ticket could be distinguished from the heading, and upon being asked whether the particular heading on certain tickets was the cause of their being received so readily, declined to respond to the question. All the witnesses coincide in stating that in this division numbers of votes not on the list of taxables were received without giving any evidence or any proof whatever. Indeed, the whole testimony shows that the election was here carried on in the most reckless manner; the sole object being apparently to get votes into the ballot-box, regardless of their legality. A number (amounting to fifteen) of foreigners, Italians, chiefly 'organ grinders,' or termed so, were at this poll permitted to vote, under circumstances that give the strongest ground for suspicion that their votes, by a combination between the inspectors and one or more persons outside, were received, though known to be illegal. Several witnesses testified that these men were brought up by Henry Monoghan, a police officer, several at a time, and upon their being challenged Monoghan would pull their papers (naturalization) out of his pocket, and there appeared to be no more than two or three papers for all; and that as fast as the papers were given back he put them in his pocket and again produced them as the next came up. The attention of Mr. Costello, the inspector, was called to this at the time, and upon his examination he says: 'I can't say how many papers there were,' and in reply to the question 'did not all the organ grinders vote upon two or three papers?' he said: 'That question it would not do for me to answer; I decline to answer it.' He fully corroborates the other witnesses as to the agency of Monoghan in the matter, and that the papers were returned to him.

"Here neither oath nor proof was required in any case. With such testimony before us what confidence can be placed in the documents returned by those election officers?

"No testimony was given to rebut or explain that given by the witnesses just referred to. An effort was made to show that the organ grinders were residents in the division, and the witness said that he (being one of them) had naturalization papers; but the objection to the admission of their votes without proof of their being legal voters is not thereby removed.

"At the 5th division of the 17th ward the evidence shows the same open disregard on the part of the election officers of the duties required. Many votes were challenged, but admitted without question or proof. Persons, apparently boys, and proved since to have been apprentices, were admitted to vote without a question being asked; and one of the same boys was permitted to vote twice within a short interval.' Mr. Donaghue, says Gardiner, a witness, 'would have acted fairly if they had let him. They swore at him. Some one on the outside began to answer for O'Neill (a voter.) I said "let him answer for himself."

Mr. Donaghue then questioned him, and the judge swore at Donaghue to know what he was doing. Mr. Donaghue asked O'Neill if he was a citizen, he said not; asked him if his father was a citizen, he said not. They had a little wrangling inside about it. Finally, Mr. McAninny, the inspector, took the vote and put it in the box.' The evidence in regard to the admission of O'Neill's vote is corroborated by himself, who, in his testimony, adds that he was drunk. The evidence of Abram Sell fully corroborates the statements of Gardiner as to the manner of conducting the election in this division, and no opposing testimony has been produced to call the correctness of his evidence in question.

"In thus reviewing (says Judge Thompson) the evidence relating to the conduct of the election officers at the several polls, we have treated it as affecting their actions only so far as to ascertain what degree of credit we are bound to give to the returns and documents made out by them. We have not considered it as tending to establish distinctive and positive frauds on the part of the election officers, for the reason that the respondents seem to believe that such an investigation was not admissible under the petition as filed by the contestants, and subsequently corrected and amended. A portion of the original petition, which was designed to embrace the fraudulent conduct of the election officers, was, as we now think, improvidently stricken out. That conduct is and ought to be a subject of consideration as connected with the investigation of election frauds; and the allegation of such frauds, insufficiently expressed in the petition, should rather have been amended than erased.

"As the case now stands before us, we should be derelict in our duty did we not unhesitatingly express our conviction that the acts of the officers in the election divisions to which we have referred in the receipt and recording of votes are so utterly and entirely unreliable that the truth cannot be deduced from any records or returns made by them in relation thereto."

The judge adds: "Had we not erased from the petition the specifications alleging gross frauds and irregularities on the part of the election officers in the divisions referred to a different course would certainly have been adopted. The entire proceedings were so tarnished by the fraudulent conduct of the officers charged with the performance of the most solemn and responsible duties, that we would not only have been abundantly justified, *but it would have been our plain duty to throw out the returns of every division to which we have referred.*"

List of illegal votes cast for J. R. Barrett, with reference to the precinct in which they were cast, number of the ballot, and the page of the abstract by which they were proven to have been cast for Barrett.

PRECINCT 11.—*Carondelet.*

Number of ballot.	Page of abstract.	Name of voter.
2	100	Francis Gaben.
12	100	M. A. Dontreet.
18	100	John G. Kelly.
25	100	Irrentin Brooks.
35	100	Cornelius McGregor.
43	100	Amedee Noell.
60	100	Thomas Hefer.
62	100	William Kell.
72	100	John Owens.
97	100	John Davis.
98	100	E. F. Donelly.
102	100	Lewis Daprone.
107	100	William Dougherty.
130	100	Michael Stack.
138	100	Cornelius How.
147	100	Edward McCarthy.
149	100	Patrick Delany.
158	100	Thomas McGrey.
159	100	Timothy Ryan.
171	100	John Deroin.
172	100	Bart. Collins.
175	100	Patrick Murphy.
190	100	Edward Kassett.
226	100	Michael McKay.
229	100	John Delany.
230	100	James Sanders.
231	100	Edward Kinney.
232	100	James Sullivan.
233	100	James Cogan.
236	100	James McDonald.
239	100	John Calvey.
245	100	John Leary.
258	100	Thomas Smeady.
265	100	James Smith.
282	100	William Neil.
300	100	Owen Kennon.
310	100	Thomas McMann.
324	100	Samuel Belson.
331	100	Harrison Painter.
335	100	Martin O'Brien.
352	100	Henry Walter.
356	100	Michael Lehy.
367	100	Michael Nolan.
374	100	Thomas Slay.
388	100	Michael McKay.
411	100	Samuel Carroll.
412	100	Michael Janety.
415	100	John Robbins.
437	100	Pat. Gilroy.
447	100	John Chesly.
460	100	John Corman.
492	100	James Malone.

PRECINCT 11.—*Carondelet*—Continued.

Number of ballot.	Page of abstract.	Name of voter.
502	100	John . Elliott.
503	100	Mich[illegible] Allifan.
505	100	Charles Allifan.
507	100	James McGawen.
510	100	John Mathes.
511	100	Michael Kelly.
197	100	John Turner.
349	100	James Moran.

HARLEM HOUSE.

38	96	Thomas Craton.

GRAVOIS MINES.—*J. Horton's house.*

5	94	A. Adams.
6	94	Lewis Laos.
7	94	Thomas Lowry.
8	94	George Lee.
10	94	William Heaton.
12	94	John Pedig.
18	94	James Horton.
23	94	William Sumner.
26	94	P. Leaghet.
27	94	James McKenney.
28	94	M. Morrison.
30	94	William Clark.
31	94	Michael Sneade.
34	94	Jno. Bowers.
39	94	Edward Grey.
44	94	Christ. Kehles.
47	94	Thomas Folley.
52	94	F. Cooney.
54	94	Samuel D. Thompson.
57	94	William Wandless.
59	94	Pat. Lanles.
60	94	John Ortes.
62	94	Samuel Drumes.
63	94	Ant. Buckey.
66	94	William Burdell.
68	94	David McLure.
71	94	John More.
73	94	James Kelley.
80	94	William Billing.
86	94	Dennis Begley.
87	94	Michael Murphy.
88	94	John Frey.
89	94	William Brutt.
90	94	Dennis Ryan.
91	94	John Conners.
92	94	Owen Castello.
93	94	Jerry Corbyne.
94	94	Thomas Connell.
95	94	Ed. Ryan.

GRAVOIS MINES—Continued.

Number of ballot.	Page of abstract.	Name of voter.
97	94	Thomas Beths.
98	94	Pat. Castello.
99	94	Pat. Denly.
101	94	James Murphy.
103	94	Morgan Owens.
104	94	William Wallones.
105	94	James Bently.
109	94	Phil. Lowes.
110	94	George Davis.
122	94	Michael Conklin.
123	94	Michael Hogan.
135	94	Thomas W. Muttes.
136	94	Philip Smith.
137	94	Thomas Donegan.
138	94	John Kelmes.
139	94	John Fallert.
140	94	Michael Murray.
156	94	Pat. Fagge.
157	94	Ant. McClure.
166	94	Robert Ketton.
168	94	F. Ryan.
173	94	James Donahoe.

SECOND WARD—*Eastern precinct.*

1270	30	Patrick Harry.
884	30	John Hahn.
159	31	Chris. Scheck.
439	31	William Mueller.
463	32	W. Williamson.
910	32	John Shinkel.
194	32	John E. Baner.
328	32	John Hogan.
1050	32	George Bowman.
431	33	W. Urban.
472	33	John Frederick.
224	33	William Maisterbrook.
1120	33	Fred. Kraf.
356	33	Peter Hart.
1265	33	John Gantes.
1198	33	John C. Bender.

THIRD WARD—*Eastern precinct.*

695	37	John Sullivan.
671	38	John Foy.
166	38	Michael Nolans.
316	38	Pat McCans.
119	38	Michael Burns.
122	38	George F. Martin.
437	39	John Murphy.
436	39	John Kelly.
2	39	J. H. Greffenkamp.

THIRD WARD.—*Eastern precinct*—Continued.

Number of ballot.	Page of abstract.	Name of voter.
48	39	John Burke.
196	39	William Nolan.
168	39	Chris. Nolan.
56	39	J. Horn.
532	39	William Kelly.
525	39	Joseph Ruedi.
603	39	Michael Laughlin.
673	39	John O'Neil.
819	40	William Carroll.
153	40	Thomas Nolan.
498	40	James Kelly.
827	39	Dennis Burns.

EASTERN PRECINCT.—*Fourth ward.*

1097	41	Pat. O'Leary.
22	41	Thomas Aley.
420	41	John Cotter.
776	41	Henry Hudson.
803	41	Thomas Clarke.
841	41	James Walsh.
861	41	David M. Bell.
568	41	Dennis Maher.
283	41	William Grace.
756	42	John Maharer.
651	42	John Reeves.
784	42	Dennis O'Connell.
629	42	Henry Smith.
716	42	Ed. Burn.
774	42	B. Coughlan.
650	42	Peter Duffey.
970	42	John Dailey.
200	42	Pat. Griffin.
124	42	Patrick Woodlock.
30	42	J. R. H. Embert.
664	42	T. L. Romer.
647	42	M. Tracey.
883	42	John Beans.
891	42	John Dundavid.
971	42	And. Williams.
900	42	Pat. Finn.
804	42	A. D. Cockran.
771	42	John Clooney.
652	42	John Conroy.
486	42	P. W. Carroll.
1549	42	Martin Casey.
1576	42	James O'Brien.
1525	42	Pat. O'Leary.
1110	42	Ed. Tovey.
1195	42	John Kenna.
1197	42	M. F. Flinn.
968	42	Michael Slaughter.
925	42	William Hovey.
972	42	Hugh Brady.
871	42	Ed. B. Bryan.
1516	42	P. Barrett.

EASTERN PRECINCT.—*Fourth ward*—Continued.

Number of ballot.	Page of abstract.	Name of voter.
1124	42	Hugh McLoan.
1383	43	Fred. Granter.
727	43	Pat. Ford.
1211	43	Thomas Garrick.
1300	43	James Carrigan.
460	43	James Kearney.
612	43	Barney McTrewan.
684	43	Charles Conroy.
888	43	W. C. Bryan.
1104	43	Isaac Gleason.
1252	43	James Halloran.
1413	43	David Knoles.
1456	43	William Looker.
1503	43	Daniel Doyle.
1592	43	P. Muller.
1134	43	Michael Dwyer.
1150	43	Thomas Williams.
1596	43	James Crogan.
1050	43	Pat. Halpin.
1020	43	George Delaney.
1191	43	Hugh Clarke.
378	43	P. Guneer.
726	43	William Boyce.
627	43	William Clark, (voted twice.)
628	43	John Mengett.
418	43	Pat. Dunder.
1361	43	Timothy Pearson.
1241	43	John Leary.
924	43	James Hansey.
1215	43	William Hogan.
943	43	William H. King.
1273	43	Pat. Kerbey.
944	43	Pat. Shields.
926	43	John O'Malley.
1360	43	Sam. Mahoney.
1139	43	J. D. Farrell.
1568	44	John Leary.
1415	44	J. C. Riggin.
1328	44	Dennis P. Downey.
1331	44	Ed. B. Flood.
1061	44	A. Barry.
1059	44	Michael McMahon.
885	44	Thomas Murphy.
827	44	Michael Fox.
873	44	Ed. Juninlevere.
976	44	Phil. Fitch.
940	44	Philip Carrigan.
790	44	D. M. Keegan.
533	44	Peter Lynch.
892	44	Michael Barton.
626	44	John Dunn.
259	44	Matthew Kear.
64	44	Daniel O'Brien.
104	44	William Bennett.
1455	44	Michael Shands.
1387	44	Peter Flemming.
1427	44	P. Haley.
1423	44	Pat. Cummins.
1491	44	James Roach.

EASTERN PRECINCT.—*Fourth ward*—Continued.

Number of ballot.	Page of abstract.	Name of voter.
1315	44	H. O'Brien.
1171	44	Michael Nolan.
1078	44	John Malone.
1033	44	Michael Conghlan.
1027	44	Peter Wells.
688	44	Michael Ryan.
387	44	Michael Viley.
565	44	Charles Korrigan.
665	44	Pat. Grace.
364	44	Michael Mahlan.
922	44	J. H. Thompson.
1060	44	Joseph Brimmer, jr.
1551	45	James O'Conner.
1509	45	Timothy Maloney.
1495	45	Henry McCoy.
1510	45	Ryan Stapleton.
1424	45	John Haley.
1378	45	John G. Tenain.
1400	45	Jeremiah Whelan.
1588	45	William Bean.
1035	45	Michael Fitzgerald.
863	45	William Carrigan.
919	45	Martin Cunningham.
1026	45	Dennis Shields.
428	45	C. H. Stevens.
505	45	Michael Hawley.
826	45	Charles Curtis.
882	45	Thomas Ronan.
978	45	Timothy Barrett.
226	45	Michael McGrath.
205	45	Pat. O'Hagan.
142	45	James Dillon.
245	45	George Rogers
155	45	James Burns.
377	45	Michael McMahon.
956	45	John Daley.
101	45	Charles Fritz.
840	45	Martin Ford.
1127	45	Thomas Grason.
1123	46	William Kerwick.
1227	46	A. G. Brown.
945	46	F. E. Kellehan.
625	46	Thomas Rook.
1545	46	Michael Manny.
107	46	Samuel Wiley.
1483	46	Thomas Gainey.
905	46	Pat. Killehan.
233	46	Michael Callan.
302	46	John Carrman.
1243	46	Michael Malley.

WESTERN PRECINCT.—*Fourth ward.*

78	46	John M. Strief.
122	46	Michael Cox.
118	46	Pat. McCormick.
155	46	James Slevin.

WESTERN PRECINCT.—*Fourth ward*—Continued.

Number of ballot.	Page of abstract.	Name of voter.
73	46	Thomas N. Barrett.
50	47	Pat. Ryan.
34	47	Pat. Carey.
111	47	James Hamberry.
61	47	Simon Ranney.
19	47	Patrick Dooley.
47	47	Matthew Raffertey.
112	47	John Griffith.
45	47	John Quigley.
54	47	William Kelley.
165	47	Lewis Turcotte.
144	47	Michael Keys.
90	47	Edward Davis.
132	47	William McCrerey.
151	47	John Winlaumbe.
110	47	John R. Brewster.
145	47	James J. Leonard.
117	47	Jackson Farrar.
37	47	Timothy Ryan.
36	47	Patrick Maher.
40	47	John Ryan.
35	47	Lawrence Carey.
113	47	Michael Kennedy.

EASTERN PRECINCT.—*Sixth ward.*

1067	58	Thomas Lynch.
384	58	Thomas Roach.
759	58	Matthew Fay.
498	58	Pat. Murphy.
733	58	Thomas Brown.
837	58	John Sheean.
820	58	Mike Kennedy.
907	59	D. Dorriss.
1209	59	J. D. Rumph.
67	59	Thomas Gallagher.
42	59	Thomas Gallagher.
780	59	Thomas White.
663	59	Patrick Hall.
157	59	James Kelly.
1124	59	Daniel Sullivan.
718	60	Peter Lenord.
521	60	Peter Lynch.
920	60	James Ryan.
857	60	John Cergrove.
858	60	John Murray.
188	60	Mike Reilly.
853	60	Peter Coney.
1054	60	Patrick Shay.
1166	60	Jos. Smith.
749	60	J. D. Carlen.
1005	60	Patrick Dolan.
440	60	Jerry Sullivan.

SIXTH WARD.—*Western precinct.*

Number of ballot.	Page of abstract.	Name of voter.
7	61	Wm. Coulter.
23	61	Richard Tobin.
12	61	John Murray.

SEVENTH WARD.—*Eastern precinct.*

669	63	James Callahan.
359	63	Robert Kelley.
1065	63	Joseph Kain.
892	63	Laurence Laflin.
77	64	Edward Dugan.
1075	64	James Gorman.
1369	64	Peter Easerby.
1272	64	James Dougherty.
1368	64	Pat. Cavanagh.
1364	64	Pat. Sullivan.
1120	64	James A. Grant.
1163	64	John Toole.
275	64	Pat. McDouell.
1257	64	Martin Kerrigan.
313	64	Pat. Burke.
921	64	Henry Baldwin.
701	65	Owen Reilly.
1252	65	Anthony McGowan.
1311	65	John Kelly.
922	65	James Clancy.
562	65	James Eagan.
300	65	Timothy Scanlan.
198	65	Thomas McCarthy.
689	65	Pat. Kirby.
1187	65	Thomas Ready.
895	65	Michael Delaney.
988	65	Pat. McCloy.
821	65	James Kain.
137	65	James Carr.
1140	65	Pat. Roach.
743	65	James McCane.
1373	65	Pat. Sullivan.
1434	65	John King.
1397	65	Peter Gibbons.
1149	65	Chris. Kenan.
1153	65	James Corcoran.
968	65	Jerry Driscoll.
969	65	Timothy Donovan.
987	65	Michael Conley.
1255	65	Pat. Conway.
598	65	Pat. Sullivan, (voted three times.)
916	67	Larry Murphy.
109	67	Wm. T. Bromfield.
1012	67	James Kerrigan.
1084	67	Pat. Gallagher.
1293	67	John McDouell.
1047	67	James Mohan.
1175	67	Michael White.
1375	67	John Sharkey.
1303	67	Patrick Cline.
1185	67	Pat. O'Connell.

EIGHTH WARD.—*Eastern precinct.*

Number of ballot.	Page of abstract.	Name of voter.
268	70	Wm. Neill.
266	70	M. N. McCormick.
1005	70	Pat. Welsh.
1922	70	Thomas J. Barrett.
1695	70	M. County.
107	70	M. O'Neill.
520	70	John Smith.
221	70	John Reilly.
233	70	E. Fitzgerald.
1513	71	Dan Dougherty.
1362	71	Pat. O'Donnell.
72	71	H. Strouttmann.
1812	71	M. McCormick.
185	71	Pat. Mahan.
1953	71	Samuel Kelly.
788	71	P. Gamey.
887	71	E. Daley.
950	71	M. Hogan.
1029	71	H. Meyer.
1441	71	E. O'Shonnesey.
1418	71	M. Crowe.
1538	71	John Devinney.
1613	72	Pat. Casney.
1740	72	Pat. Quinn.
495	72	John Carroll.
625	72	Joseph Hart.
608	72	Thomas Gallagher.
536	72	D. Donnelly.
1722	72	John Reilly.
1070	72	Patrick Welsh.
1287	72	Pat. Filburn.
1062	72	Pat. Maloney.
1943	72	Thomas Hickey.
1966	72	Thomas Sweeney.
1278	72	Thomas Connelly.
887	72	Ed. Daley.
774	72	John Power.
1366	72	John Maley.
1775	72	Pat. Casidy.
74	72	Michael Dugan.
982	73	John Kelly.
1475	73	M. Moran.
1697	73	V. McKenna.
1618	73	H. Meyer.
1818	73	Pat. O'Donnell.
1803	73	Robert Hughs.
1721	73	Thomas Gallagher.
1312	73	T. Burk.
808	74	Thomas Mulloney.
1613	74	Pat. Caseney.
864	74	P. Boyle.
1913	74	John Clarke.
1909	74	Charles B. Lamb.
630	74	Hugh Gafney.
1956	74	P. Burk.
1645	74	Peter Barrett.
1729	74	John Donelly
283	74	P. Downey
1300	74	Pat. Craney.

EIGHTH WARD.—*Eastern precinct*—Continued.

Number of ballot.	Page of abstract.	Name of voter.
103	74	James Helpin.
795	74	M. Shonessey.
715	74	James Conroy.
705	74	James Dougherty.
772	75	John Kelly.
1395	75	John Conroy.
1180	75	Peter Coran.
877	75	T. McCartney.
771	75	Ed. Fitzpatrick.
245	75	Thomas Murphy.
219	75	M. Welsh.
571	75	P. O'Neill.
1253	75	Thomas Hughes.
1336	75	F. McCabe.
1537	75	P. Connell.
1720	75	M. Shea, (two votes.)
113	75	James Helpin.
1469	75	James McCune.
1137	75	P. Homes.
1087	75	M. Foley.
917	75	Pat. Hogan.
884	75	P. O'Neill.
317	75	Thomas Higgins.
1454	75	John Rody.
685	76	M. Kelly.
1014	76	Thomas McCartney.
244	76	August Condon, (voted twice.)

SEVENTH WARD.—*Western Precinct.*

4	69	Samuel Wood.
173	69	Richard Gayham.
56	69	Pat. Quin.

EIGHTH WARD.—*Western Precinct.*

463	76	M. Burke.
57	76	John O'Hara.
136	76	P. Conner.
429	76	John Lynch.
25	77	Pat. Powers.

NINTH WARD.—*Eastern Precinct.*

486	78	Laurence Johnson.
419	78	Thomas Wilson.
194	78	Patrick O'Brien.
283	78	Pat. O'Brien.
144	78	James P. Haley.
276	78	John Murphy.
26	78	John R. Keith.

NINTH WARD.—*Eastern precinct*—Continued.

Number of ballot.	Page of abstract.	Name of voter.
90	79	John Reigan.
291	79	Michael Grady.
80	79	James Smith.
89	79	Thomas Gallagher.
857	79	Michael Ford.
615	79	Thomas Devinney, (voted twice.)
573	79	Michael Holden.
404	79	Thomas Lynch.
605	79	John Mack.
233	79	James Brown.
226	79	William Dougherty.
34	80	James Smith.
283	80	Pat. O'Brien.
304	80	Pat. Walsh.
446	80	William G. Lyons.
270	80	Pat. Kennedy.
837	80	James McMan.
45	80	Jas. McLaughlin.
739	80	Pat. Moran.
285	80	James Murphy.
64	80	Mich'l Sheridan.
49	80	Patrick Doyle.
315	80	Patrick O'Brien.
186	81	Mich'l Donahoe.
618	81	John O'Brien.
385	81	Patrick Welsh.
497	81	Patrick Burns.
599	81	John Carroll.
724	81	Thos. Joyce.
769	81	Dan'l Harrigan.
392	81	Edward Maher.
644	81	Patrick O'Brien, (5 votes.)
826	81	Thomas Kelly.
827	82	Joseph Moore.
362	82	John Ryan.
776	82	Mich'l H. Kelly.
851	82	Patrick Kelly.
846	82	John Doyle.
360	82	Edward Welsh.
829	82	Joseph Cox.
652	82	Dennis Sullivan.
873	82	James Cass.
311	82	James McCarty.

NINTH WARD.—*Western precinct.*

47	83	John Casey.
108	83	Richard Ryan.
417	83	James Murphy.
136	83	John Kane.
172	83	John Magee.
41	83	Edward Collins.
663	84	Edmund Barrett.
464	84	James Murphy.
683	84	Michael Welsh.
437	84	Michael Lawles.
27	84	Patrick Hannessey, (voted 3 times.)

NINTH WARD.—*Eastern precinct—Continued.*

Number of ballot.	Page of abstract.	Name of voter.
509	84	Peter Burns.
162	84	Pat. Hannessey.
171	84	John Murphy.
128	84	Michael Nolan, (voted in 4 precincts.)
424	84	Richard Greene.
582	85	John Murphy.
324	85	Wm. Gorman.
607	85	Nicholas Ready.
151	85	Edward Heenan.
107	85	John O'Brien.
148	85	Thomas Kenney.
383	85	Timothy Sullivan.
117	85	Thomas Riley.
502	86	Pat. Fox.
211	86	Wm. Rheeve.
572	86	Thos. Fitzgerald.
605	86	Pat. Roke.
518	86	Jerry Spleen.
293	86	Pat. Crossin.

TENTH WARD.—*Eastern precinct.*

279	86	Wm. Roberts.
298	86	Mich'l Shehan.
748	86	Tim. Riskoll.
809	86	Tim. Buckley.
219	87	Chris. Hanneman.
177	87	Owen Lamb.
796	87	John Moran.
748	87	Tim. Riskoll.
729	87	John Mooney.
448	87	Edw'd Pipe.
549	87	S. Lafontaine.
212	87	Edw'd Lanigan.
1218	87	Pat. Gorman.
1203	88	John Meyer.
951	88	Wm. Haskelrodes.
300	88	Pat. Sullivan.
722	88	Mich'l Daly.
897	88	Thomas Burns.
1116	88	Mich'l Coughlin.
933	88	Mich'l O'Brien.
1076	88	L. J. Cooper.
933	88	Mich'l O Brien.
1045	88	Bernard McCabe.
1028	88	Mich'l O'Brien, 3 votes.
1177	88	Patrick Clark.
1082	88	John Collins.
1020	88	James McGay.
1138	89	Michael Dougherty.
402	89	Jer. Donnelly.
829	89	John Overton.
372	89	George Hollingsworth.
1242	89	Frank Beard.
895	89	John Sullivan.
963	89	Thomas Ryan.
1391	89	H Brigham.

TENTH WARD.—*Western precinct.*

Number of ballot.	Page of abstract.	Name of voter.
163	92	Theodore Wetter.
335	92	Frank Ebenricht.
173	92	Anton Roth.
191	92	Francis Nolan.
23	92	A. S. Jordan.
244	92	William Israel.
134	92	Barney Finnigan.
448	92	Archibald Carr.
469	92	H. Northhouse.
292	92	Michael Crowley.
425	92	B Lampkensies.
511	92	Michael Whalan.
495	93	Peter Haupt.
180	93	Mike Riley.
508	93	John H. Ryan.
496	93	E. Kestermnecke.
458	93	R. Lawless.
361	93	H. Barthold.
517	93	Florence Kelley.
509	93	Charles Redfield.
514	93	Roger Irwin.
520	93	John Nash.
444	03	William Apenbrick.
483	93	George Brady.
522	93	Michael Berry.
250	93	George Kerbrer.
470	93	John Kramer.
325	93	Peter Bonfife.
323	93	Anthony Block.
320	93	John Grace.
319	93	John Callahan.

AT MEHL'S STORE.

96	----------	James C. Hall.
75	----------	George McGown, six of Hall's men.

JOHN BRAY'S HOUSE.—*Central House.*

153	----------	John Lind.
147	----------	John Farrell.
117	----------	Dennis Grace.

ALLERTON HOUSE.

70	----------	Joseph Brooks.

POLLITZ HOUSE.

232	----------	John Fennessey.

Illegal votes cast for F. P. Blair, jr.

SECOND WARD.—*Eastern precinct.*

Number of ballot.	Name of voter.
1219	Auguste Waldemer.
604	Henry Stumpf.
845	Frederick Hoffman.
83	Christ. Korteman.
1001	Frederick Spies.
516	Henry Frunk.
874	George Mueller.
810	Francis Wies.
58	Lorenz Winkler.

THIRD WARD.—*Eastern precinct.*

252	Joseph Kuntz.
817	John Miller.
412	Frederick Meyer.
80	F. Pugge.
556	Thomas Tmith.
210	Henry Warther.

FOURTH WARD.—*Eastern precinct.*

1201	Charles Kobiche.
667	William Roberts.
289	B. Wagner.
310	Thomas Bush.
767	Phil. Farly.
636	M. Dennis.
1102	George Shaffner.
983	Thomas Quigley.
841	James Walsh.
1140	James Kahill.
1077	J. Murphy.
339	Charles Gross.
1561	William Fenner.
1512	F. Weber.
558	H. Schneider.
1282	Charles Newman.
1420	William Hoffman.

FOURTH WARD.—*Western precinct.*

31	William Ryan.

NINTH WARD.—*Eastern precincts.*

Number of ballot.	Name of voter.
12	Dennis Carroll.
582	Henry Sherman.
596	Gottlieb Helwig.

NINTH WARD.—*Western precinct.*

296	Walter Shea.
415	Thomas Gorman.

CARONDELET PRECINCT.

69	Abner Monks.
88	James Nevill.
100	John Knippenburg.
198	Levi Farwell.
212	John Allen.
214	L. H. Walter.
242	Adam Jobson.
259	George Schwint.
402	Clemens Kelly.
414	Jeremiah Sullivan.
459	Henry Pilcher.
466	Edward Tobin.
475	Samuel Vandenburg.
478	John Larkin.
510	John Mather.
	John F. Newhaus.
	Adolph Knippen.

MINORITY REPORT.

Mr. GILMER, from the minority of the Committee of Elections, submitted the following views:

The undersigned, being a minority of the Committee of Elections, and differing from the conclusions to which the majority of said committee have arrived in the case of J. R. Barrett, whose seat is contested by F. P. Blair, jr., beg leave to submit their views in the form of a minority report:

That they have carefully examined the various questions of law and fact arising from the testimony introduced by the parties, and have come to the conclusion that the right of Mr. Barrett to the seat he occupies has not been impeached by any competent or credible evidence.

At the election held on the 2d of August, 1858, in the third congressional district of the State of Missouri, comprised of the city and county of St. Louis, J. Richard Barrett, the sitting member, F. P. Blair, jr., the contestant, and Samuel Breckinridge, were voted for as candidates for Congress. According to the returns, after deducting 180 votes from the vote of the contestant, in consequence of a mistake made in his favor in the eastern precinct of the seventh ward—

	Votes.
J. Richard Barrett had	7,057
F. P. Blair, jr., had	6,450
Samuel Breckinridge had	5,668
The majority for Barrett over Blair in the district was	607

But the contestant alleges that, notwithstanding this apparent majority for the sitting member, he, the contestant, is the duly elected representative of the district, because, he says, said majority was procured by bribery and corruption, and gross partiality and fraud practiced by the officers of the election, &c. The notice of contest contains nineteen charges or specifications, which may be reduced to the following principal heads:

1. Bribery and corruption practiced by the sitting member, and the expenditure of large sums of money by the federal office-holders.
2. Fraudulent voting.
3. The exercise of force and violence by which voters were overawed and prevented from voting.
4. The employment of spirituous liquor to procure fraudulent votes, and to induce voters to vote more than once.

5. Fraud and partiality on the part of the judges at the Gravois and eastern precincts of the eighth and ninth wards.

6. Fraud in counting the votes.

7. Threats of Judge Hackney, by which men were compelled to vote against their sentiments.

8. Fraudulent imposition of tickets on persons who could not read English.

9. Fraudulent increase of the vote of the sitting member, proved by a comparison of the vote of the latter with that of Reynolds in 1856.

10. The judges and clerks were not qualified to act through a failure to take and subscribe the oath required by law; also, that the returns were not made according to law.

First charge—Bribery and corruption.

The charge that the sitting member was guilty of bribery and corruption, and that the federal office-holders had expended large sums of money to secure his election, is a very grave one, and made by the contestant without reservation or qualification. But notwithstanding the positive and unreserved character of the charge, the evidence produced to support it is not sufficient, in the judgment of the undersigned, to create a suspicion, much less establish a presumption against the integrity of the sitting member, or the fairness of his election. Nor is there a word of testimony to show that a cent of money was furnished, by federal or other office-holders, to influence the election.

The story of Tom Talis, that Mr. Barrett lent Bob Lynford five dollars at the Gravois precinct on the day of election, is the only evidence the contestant has produced of any employment of money by the sitting member during the canvass. From this evidence, it appears that Bob Lynford was a political friend of the contestant, and had voted for him soon after the opening of the polls. Lynford's name is number eleven on the poll-book; and it appears from the corresponding ballot, as well as from the testimony of Talis, that he voted for Mr. Blair. It is also proved that Mr. Barrett was aware of the fact that Lynford had voted for the contestant before he loaned him the money.

No ingenuity can distort this transaction into an attempt to bribe. If the evidence establishes anything, it is, that the liberality and generosity of the sitting member were not restricted to his own party friends.

The testimony of Auguste Grabe and Frederick Hill, to the exclamations made in the crowd of "a dollar and a quarter a day for whoever goes for Barrett," and the call of one Irishman to a parcel of other Irish, of "come on boys, come on, a dollar and a quarter for every vote;" and the testimony of John M. Hinderschit and Thomas Wall, the former relative to Voss's complaint of something about a note, and of having brought a hundred men from the railway to vote, "at a big place from Vide Poche and St. Louis, and different polls;" and that of the latter relative to Jack McDonnell, who showed him an order without date or sum, written in pencil, signed J. R. Barrett, and saying "give the bearer some money—he is a horse to work, or a regular hard-worker," or something of the kind, he did'nt know

well what, as he was sick in bed, utterly fails to support the charge of bribery preferred so positively by the contestant.

Testimony like the foregoing fails in all the elements, both of competency and reliability. It is not brought home to, or connected with, the party whom it is designed to affect; it is irrelevant and incoherent, predicated on the act of no particular person or party. The exclamations were uttered by persons unknown, addressed to no one knows whom, and refer to no one knows what. Of what value can such testimony be to establish a charge such as the one preferred?

But the contestant insists that the sitting member has admitted his connexion with McDonnell, and also that he had given the order, by asking the witness Wall, "if McDonnell had said he was in the procession, (a procession previously referred to,) carrying a transparency."

The undersigned can see nothing in the question put by Mr. Barrett to the witness which can be construed into an admission either of any connexion between him and McDonnell, or that he had given the so-called order. McDonnell had told his friend Wall that "he had been promised money, and that *they* would not pay him after the election was over." What, therefore, was more natural than that Mr. Barrett, who denies all knowledge both of McDonnell and the order, should desire to know who gave it and for what it was given? But if such an order had been given to this person, which is intrinsically unlikely, there is nothing in the testimony from which a fair inference can be drawn that it was given for any corrupt purpose. Not only is it insufficient to justify such an inference, but even to create a suspicion in any unprejudiced mind that bribery was intended by the sitting member.

It is in proof that considerable sums of money were raised by the contestant and his friends for electioneering purposes. But it would be very unfair to infer that the money so raised was to be employed in purchasing votes. Yet the fact that money was raised for electioneering purposes would go much further to support a presumption that it was designed to purchase votes than the testimony referred to to establish a like presumption against the sitting member. Between the fact of money raised for electioneering purposes and the purchase of votes there is a sequence more or less direct. But the loan of five dollars to a friend of the contestant by the sitting member, after being informed that he had already voted for the contestant, raises no presumption of a design to bribe the person to whom it was made. And between the order without sum and without date, which Wall saw in the hands of his friend McDonnell, and the act of bribing him or any one else, there is no necessary or probable connexion whatever. This man McDonnell, according to contestant's own showing, is a convicted vagrant and thief. Yet it is upon such testimony and such presumptions that the grave charge of bribery and corruption rests. The charge that money was furnished for a like purpose by officers of the federal government is supported by no testimony of any kind.

It is needless to say that the charge of bribery and corruption is not sustained. We pass from this charge to the next.

Second charge—Fraudulent voting.

In support of this charge the contestant relies on two classes of testimony: the first being the testimony of individual witnesses, examined before commissioners; and the second consisting of abstracts from the poll-books, and a municipal census, ordered by the mayor and council of St. Louis, shortly after the election of the 2d of August, 1858.

The parol testimony is very voluminous; so much so as to preclude the practicability of citing it within the limits of an ordinary report. This testimony is almost entirely hearsay, and not unfrequently hearsay derived from no particular person, and limited to no particular place. Idle declarations, proceeding from no one knows whom, and relating to no one knows what, have been introduced in quite a number of instances. Rumors, impressions, beliefs, declarations of persons named and unnamed, exclamations shouted by unknown individuals from the midst of promiscuous crowds, together with inferences without premises, constitute the larger part of the parol testimony. Testimony of this kind is inadmissible, and if received would be valueless. While the rules of the law of evidence have been relaxed, in obedience to congressional precedents, they must still be regarded as our best guides in the ascertainment of truth. Mere convenience must prescribe some limits, beyond which no tribunal charged with the investigation of truth will go, in the admission of testimony. Were all rules broken down, and the door opened to the admission of all kinds of testimony, investigations would become interminable, and disputes and controversies multiplied without limit. But if rumors, impressions, inferences, declarations limited neither to person nor place, beliefs, and exclamations caught up from excited and noisy crowds are admissible, there remains no longer a boundary line between admissible and inadmissible testimony.

In the present case, the contestant has not been at pains to produce the best evidence within his reach, except in a very few instances. He has almost uniformly called, not the person cognizant of the fact which he proposes to prove, but some one who has heard, perhaps, at second hand, the declarations of such person. A majority of the witnesses have testified, not to facts within their own knowledge, but to declarations made by others; and this is the case even when the persons making the declarations were in the city, and within reach, at the time of the examination.—(*Vide* Brown's testimony, pp. 435, 439.)

Testimony of this character is incompetent, and there is no authoritative precedent which would authorize its admission. The statements of a person present before the examining tribunal, where his bearing could be observed, and his memory and knowledge of the subject tested by a cross-examination, would be rejected because he was not sworn. On what principle could his casual declarations, made, perhaps, thoughtlessly, and remembered imperfectly by the witness who repeats them, be received? The statements of such a person, so made, though unsanctioned by an oath, would be surely more satisfactory, and less liable to mislead, than if received at second

hand through the mouth of a witness whose honesty, accuracy, and memory might be all at fault.

To reject the statements of a party, made in the presence of the investigating magistrate, on the ground that they were not verified by oath or affirmation, and to admit them when made elsewhere, would be too grossly inconsistent with the principles of the law of evidence to find an advocate in any enlightened tribunal. The undersigned have for these reasons opposed the admission of declarations of third persons, except in the case of the declarations of voters. In such cases they have been willing to receive them whenever they constituted a part of the act of voting, or were offered in corroboration of declarations made in reference thereto.

As to the census lists and extracts from the poll-books produced by the contestant, the undersigned do not consider them admissible as evidence for the purpose intended. To make these lists and extracts evidence, the identity of the voters on the poll-books with the persons bearing the same names on the census lists must be established by independent testimony. This has not been done.

No argument is necessary to show that a vote is not necessarily illegal because it is found on the poll-books and not on the census lists. If the census had even been made on the day of election there would be nothing like the certainty required by law, that the vote of a person found on the poll-books was illegal because no similar name was found on the census return. The name might be omitted on the latter by mistake ; and by the laws of Missouri persons residing in one ward are allowed in the city of St. Louis to vote, under certain circumstances and regulations, in a different ward. But where the census is not taken on the day of election, the fact that the name of a person found on the poll-books is not found on the census is scarcely sufficient to raise even a suspicion of illegality. Men who are the residents of one ward or precinct to-day may be residents of another ward or precinct to-morrow, or have removed entirely from the city. To receive such lists as evidence would not only be a violation of the rules of evidence, but would lead to the greatest injustice.

After carefully examining the parol evidence and comparing the poll-books with the census lists, the number of votes successfully impeached as illegal by the contestant does not exceed twenty-seven. The extracts from the poll-books and census lists were admissible only as helps to the memory of the witnesses ; and effect was given to them no further than in such instances as the names on the former were identified by independent testimony as belonging to illegal voters.

The following are the persons whose votes we have referred to as being successfully impeached by the contestant. It will be found, by reference to the testimony, that several of the cases are far from being free from doubt. But believing that the preponderance of the testimony is against their legality, we have thought it best to strike them from the return of the sitting member.

John Owens (p. 469) voted ; he is impeached by his own testimony; John Foy (p. 494) voted ; he is impeached by his own admission made subsequent to the election to Thomas Curley, who is by no means a

candid witness. If his testimony is true, Foy came from New Hampshire shortly before the election, and voted (as witness thinks he said) in the third ward. Thomas Dixon (p. 496) voted; he was an unnaturalized foreigner; Bernard McCabe (p. 617) voted; he was a non-resident; Barney Finnigan (same page) voted; he was unnaturalized; Auguste Condon (p. 643) voted; he was unnaturalized; Jack McDonnell (p. 740) voted; he was unnaturalized; Louis Dupont (p. 703) voted; he was a non-resident; Pat. McEvoy (p. 740) voted; he admitted he was not entitled to a vote; Edward T. Shurds (p. 509) voted; he was a minor; Patrick Foley (p. 665) voted; he was unnaturalized; James Douglass (p. 691) voted; he was unnaturalized; James Campbell and James Smith (p. 698) voted; they were neither of them naturalized; J. R. Ember (p. 744) voted; was a non-resident; Thomas Devinny (p. 641) voted; he was unnaturalized; Frank Hamilton (p. 638) voted; he was unnaturalized; Michael Dugan (p. 639) voted; he was unnaturalized; John Clark (p. 639) voted; he admitted he was not entitled to a vote; E. O'Shannessy (p. 639) voted; he was unnaturalized; John Lynch (p. 640) voted; he was a non-resident; Pat Garvey (p. 641) voted; he was unnaturalized; Michael Donahua (p. 641) voted; he was unnaturalized; Patrick Gallagher (p. 642) voted; he was unnaturalized; Thomas Burke (p. 643) voted; he was unnaturalized; James Grant (p. 691) voted; he was a non-resident; John Devinney (p. 739) voted; he was unnaturalized.

We have put down the names of the above persons as belonging to illegal voters, though the testimony by which they were impeached was in a number of instances doubtful. They number *twenty-seven* in all. Ten of them were distinctly proved to have cast their votes for the sitting member, and the probability is that all of them did so. But the evidence is not free from doubt. The uncertainty arises principally from the number of persons bearing the same names.

In addition to the above, it is alleged by the contestant that the judges of the western precinct of the first ward threw out nineteen ballots that should have been counted for him. Isaiah C. Brown, a witness for contestant, referring to this matter, states that six, seven, eight, or nine votes or ballots were thrown out. Bernard Cricheard, says there were "from twelve to thirteen not counted." Rudolph Schneider says there were from six to thirteen thrown out.

The poll-books of this precinct were not produced by the contestant, but their place was supplied by a certified copy introduced by the sitting member. From these poll-books it appears that there were 110 votes, including those alleged to have been thrown out, cast in the precinct. Of these, according to the return, Barrett received 55 votes; Blair, 40; and Breckinridge, 6—making together an aggregate of 101 votes, and showing that not more than nine of the votes had not been counted.

But Rudolph Schneider testifies (p. 556) that the ballots not counted were put back in the box, and it appears from the abstract made of the votes that a part of them at least *were counted;* for by it Blair is credited with 45 votes, making the whole number cast in the precinct and counted 106, being but four less than the whole number registered

on the poll-books. Thus, instead of losing 19 votes, according to his allegation, the contestant lost but four votes.

The undersigned have not stopped to inquire whether the action of the judges, in rejecting these votes because they were located under a wrong heading on the ticket, was proper or not. Believing that it was the intention of the persons casting these ballots to vote for the contestant, though by a wrong description of office, we have concluded to add them to the aggregate of his vote.

But a number of illegal votes have been cast for the contestant, and others have been counted for him that were cast for the sitting member. We shall refer to the several classes of votes illegally received by him in their order.

J. B. Carrol (p. 742) voted; he was a non-resident, and not entitled to vote; Patrick Sullivan (p. 816) voted, he was not naturalized; Philip Wagner (p. 833) voted, he was unnaturalized; John F. Newhouse (p. 895) voted, he was a non-resident; Adolphus Knepper (p. 915) voted, he was a non-resident; John Winkler (p. 936) voted, (see p. 120 and ballot 236,) he was also a non-resident. Here are six illegal votes that were cast for the contestant.

The following persons voted for Barrett, but were *counted* for Blair: Wm. Kerr, page 921; Jas. L. Farrell, page 921; James Shields, page 921; Jno. McMorrow, page 922; Patrick Scholly, page 922; Roger Mullally, page 923; Wm. J. Mitchell, page 908; J. R. Washington, page 895; Jno. Fitzmaurice, page 878; Pat. Hennessy, page 878. According to the abstract of ballots, they are counted for Blair. Chas. G. Mauro, page 902; T. Grimsley, page 904, testified that they voted for Breckinridge. By the abstract of ballots it will be seen that they are counted for Blair. This shows twelve votes which should be deducted from Blair's vote, and ten (10) of those votes should be added to Barrett's vote.

At the eastern precinct of the 7th ward the returns give Barrett 488, and Blair 356. According to the abstract, Barrett (pages 63 and 68) received 492, and Blair only 354. Then here are four votes to be added to Barrett's vote; two to be deducted from Blair's.

At Gravois precinct the returns give Barrett only 153; by counting the ballots of that precinct (see page 94) we find that 154 of them were cast for Barrett. Thus there is one more to be added to his majority.

Recapitulation.

Blair's vote according to return		6,451
To be added, 4 votes rejected in the western precinct of the 1st ward		4
Aggregate for Blair		6,455
From this aggregate there must be deducted the six illegal votes cast for Blair	6	
Also the 12 votes cast for Barrett and counted for Blair	12	

Ditto, in the eastern precinct of the 7th ward, Blair is returned as having received 356 votes; the abstract of ballots shows that he received but 354, which requires two votes to be deducted	2	
		20
Aggregate for Blair, after deducting illegal votes		6,435
Barrett's vote according to returns		7,057
Deduct 27 illegal votes		27
Aggregate for Barrett, after deducting illegal votes		7,030
To this aggregate there must be added 10 votes cast for Barrett but counted for Blair		10
Ditto, in the eastern precinct of the seventh ward, the returns give Barrett 488 votes; but it appears from the abstract that he received 492 votes, so that 4 votes must be added		4
At the Gravois precinct the returns give him 153 votes; by the count of the ballots it was found that he received 154 votes, so that one vote must be added		1
		15
Adding these 15 votes to 7,030 which remained, after deducting the 27 illegal votes, and the aggregate vote of the district for Barrett is		7,045
From which deduct the aggregate of Blair's vote		6,435
Majority for Barrett		610

The contestant admits in his brief (p. 3) the receipt of 73 illegal votes; but as the undersigned have not been able to find any evidence of so large a number, except by regarding the votes of all persons found on the poll-books, and not on the census list as illegal, they have not thought proper to deduct them. They may be known to the contestant to be illegal, but they have not been proved so by any legal evidence. Generally the admission of a party is received as proof, but it would not be proper to do so in this instance.

The undersigned have already shown that a comparison of the poll-books with the census lists furnishes no reliable evidence to prove that the votes of persons whose names are found on the one are illegal because they are not found on the other. Hundreds of men who voted at the election in particular wards, and whose names are consequently on the poll-books, may have removed from those wards in the two or three months which intervened between the election and the time the census was taken; and besides, as already stated, the residents of one ward may legally vote in another, under the laws of Missouri.

So far the utter unreliability of the census, arising out of the manner in which it was taken, has not been referred to. The manner in which this census was taken, as well as the grounds of its incompe-

tency, have been accurately and conclusively stated by Mr. Barrett's counsel in the argument presented by them to the committee. It is as follows:

"It will be observed that the contestant relies upon certain census lists and memoranda to reject over 600 votes, claiming that such census was taken by the authority of the municipal government of the city some time after the election. No effect ought to be given to these lists except in such cases as the persons whose names they contain were proved by other evidence than the lists themselves to have voted illegally. To admit these lists as evidence of the illegality of the votes of the persons whose names were inserted in them, because these names were not found in the wards from which they purported to have come, or because they were returned as unnaturalized, non-residents, or minors by the persons who made the census, would be to overturn all the rules of evidence, and to establish a precedent not only novel, but dangerous in the highest degree to the security of the title by which every member of Congress holds his seat. No such evidence, affecting masses of votes, has ever been received.

"By what right did the municipal census-takers of St. Louis undertake to pass upon the qualifications of the voters of that city? From whence was the power derived that gave *them* a right to inquire and determine who were and who were not citizens, who were and who were not voters? With what functions were they clothed that enabled them to decide intelligently and correctly on the questions of nativity, residence, and age, necessary in determining the qualifications of the voters? To make returns admissible as evidence, such as could be relied on, it would be necessary to have the power of summoning and examining witnesses. Had they such power? It is not pretended they had. But this would not be enough. The right of suffrage is a valuable privilege, both to the voter and the representative, who, by means of it, becomes invested with an office. Will it be pretended that the office of the representative, in which he has a property from the moment it is conferred upon him, as well as the privilege of the constituent, can be taken away or annulled by an *ex parte* proceeding, conducted by a census-taker, deriving his authority neither from a State nor from the United States, but from a municipal corporation? Can either the privilege of the one or the office of the other be taken away by such a proceeding?

"The census-taker has no power to summon witnesses, to administer oaths, or to bring the party whose qualifications are to be questioned before him. He has no power to interrogate either the party or the witnesses. Any information he may acquire must necessarily be voluntary on their part, verified by no moral or penal sanction.

"A glance at the manner in which the information which it is proposed to make evidence in the case before the committee was acquired will serve to exhibit the absurdity of relying on the testimony derived from these lists.

"The census-takers, of whose enumeration these lists are extracts, did not make the enumeration and examination of the population themselves. Each of them, it appears from the testimony, had assistants who aided them. These assistants were sometimes present, aid-

ing their principals in their labor; at other times performing it alone, and neither principals nor assistants considered it necessary to see and examine the parties themselves, nor in all cases even to go to their houses or places of residence. If they found the party they interrogated him; if not, his wife, or daughter "if old enough," in relation to his birthplace, his age, his residence, and whether he was naturalized or not. And upon this testimony it is proposed to show that persons whose qualifications were one by one ascertained and passed upon, on oath or otherwise, by the sworn officers of the law, appointed and clothed with power for that purpose by competent authority, were not legally entitled to the suffrage, the right of which was accorded to them by officers whose duty it was to satisfy themselves of such right before granting it. Is it possible that the right of suffrage, and the interest of a member of Congress in the office derived through such suffrage, are so trivial and unimportant as to be overthrown and defeated by hearsay so remote and so utterly inconclusive?

"What evidence is it that the vote of a person found upon the poll-books is illegal because it is not found upon a census thus taken, or ever so carefully taken? Men, especially laboring men, without a fixed habitation, who are the residents of one ward or precinct to-day may be the residents of another ward, or have entirely removed, by to-morrow. Besides this, by the laws of Missouri, in force in the city and county of St. Louis, the citizens of one ward may vote for members of Congress or State officers in another.

"Again, what evidence is there that the votes of persons on the poll-books are illegal because the names of persons corresponding with them are found set down in the census as belonging to unnaturalized, non-residents, or persons who are minors? It has been shown how the place of nativity, residence, and age were sought for by the census-takers. Inquiries, sometimes addressed to the person bearing the corresponding name, sometimes to the wife, daughter, servant, or neighbor, were the means that were employed. Of what value is testimony thus acquired? But even admitting the information obtained in this manner was carefully sought and accurately given by those whose knowledge, in many instances, was necessarily uncertain and unreliable, what certainty, even to ordinary intent, does it possess? In a large city, and amongst the Irish population particularly, how many persons are found bearing the same names? By a reference to the directory it will be found that there are persons by the half-score and score bearing the names found upon the poll-books. It would be, therefore, idle to rely upon such testimony.

"To make it evidence, not only must the identity of the voters on the poll-books with persons bearing the same names on the census lists be established by independent testimony, but likewise the fact that the voter was unnaturalized, non-resident, or a minor, as the case may be. It will be seen, therefore, that the illegality of the vote must be proved by competent testimony, and that the census or other lists can be used at best but as a help to the memory of the witness called on to establish any particular fact."

No other evidence having been produced by the contestant to prove

that the persons whose names were registered by the clerks on the poll-books voted illegally, except that no corresponding names were found upon the census, the undersigned have conceived it to be their duty to reject the evidence; for certainly no one will pretend to say that because the census-takers did not find and return the names of the persons on the poll-books such persons did not vote. Who can tell how many removed from one ward to another, or from the city altogether, between the day of the election and the time the census was taken? Doubtless such removals take place every day. For these reasons the undersigned have not felt themselves authorized to throw out the seventy-three votes which the contestant admits to have been illegally cast for him. To have done so, they must have given weight to testimony which proves nothing, and which is not admissible even by the relaxed construction given by the committee to the rules of evidence.

Third charge—Voters prevented from voting by force and violence.

To prove this charge the contestant has introduced thirteen witnesses. To say, simply, that he has failed in proving this charge, would convey a very inadequate idea of the total want of evidence to support it. Judging from the current of testimony, there have been few elections in the United States, especially in large cities, conducted with more order, fairness, and impartiality, than the election held in St. Louis on the 2d of August, 1858. The very fact that so much stress has been laid on the case of the Irish beggar (presently to be examined) at the Carondelet precinct, and the number of witnesses (no less than five) called to establish it, is proof of the order, propriety, and peacefulness that prevailed generally in the city and suburbs. The following is a fair statement of the occurrence, which forms so large a portion of contestant's case, under the head of "force and violence."

Henry T. Blow, a witness for the contest, testifies, p. 450–'1, that he was at the Carondelet precinct; "there was an old man came to me, and stated he wished to vote for the best man, and asked me to give him a ticket. I asked him if he was a voter, having never seen him at that time, as I recollected, though I had. He said he was; and I said, here is a ticket that I have voted myself, and I gave him a ticket. He stated that he had come to me because he had no confidence in the other fellows, as he called them, and asked me where to vote. I told him, showed him the polls, when a Mr. Donnelly, a gentleman, I believe, living in this county somewhere, I don't know where, stepped up and said to this man, you shan't vote that ticket; you are an Irishman, and one of our men. He jerked him away from where he was standing, and tried to get the ticket from the hands of the man, who protested against this conduct, and insisted on voting the ticket. Mr. Donnelly then indulged in such language towards me as to bring on a collision with me, which I avoided. He was very abusive. My impression was he had a mob to sustain him in anything he might do. I was perfectly satisfied of it. * * * They took the poor old fellow, marched off to a grocery, took him in their

arms bodily, and took him off. Next day I saw Mr. Donnelly. * * He remarked that he wished to make an explanation to me; that he had gone to Carondelet to make every Irishman vote the Barrett ticket, and I think he said to elect Judge Hackney, but this is a mere impression. The old fellow was a beggar."

Cross-examined.

Question. Did you have any difficulty in casting your vote?

Answer. No.

Question. Did you see others cast their votes without difficulty?

Answer. All the old citizens went to the polls undisturbed; strangers appeared to me to have a special care from those gentlemen I allude to.

Abraham Herbel testifies, (pp. 457, 465): I got so disgusted with it, I left pretty soon after I had cast my vote. The nationals had it so forcibly their own way, that I thought no use staying there. I got disgusted and left.

Question. How long did you remain?

Answer. About an hour.

Mr. Bernard Bloch testifies (pp. 568–572) that he went to the polls two or three times during the day. While I was at the polls I did not notice any further excitement than usual at elections.

Dr. Frederick Hill, (pp. 559–561,) on being asked if the old man was taken from the polls by violence, answers: He (the old man) intended not to go, and they talked to him in Irish and made him go, *not violently;* he was surrounded by such a crowd I could not see the man; I could see his head.

Question. Do you know of anybody that was prevented from voting that day?

Answer. Not in the time I was there, except the old Irishman.

Question. What threats were used to the old Irishman?

Answer. There was much spoken, and I did not notice the particular word; that he should be ashamed to vote the ticket that Blow gave him, as he was always against Catholics and foreigners.

H. H. Whiting testifies, (p. 700:)

Question. Was it peaceable and quiet about the polls when you were there?

Answer. I saw no particular disturbance; some loud talking occasionally; nothing riotous that I saw at all.

Question. Did you see any mob there?

Answer. I did not witness anything of that kind.

Question. For whom did you vote for Congress?

Answer. For Mr. Blair.

John Caddy testifies (pp. 765–768) that he "saw Mr. Blow give the old man a ticket, and from what I saw it was by request, I think; I saw the old man go up to Mr. Blow; Mr. Blow remarked to me as soon as he gave him the ticket, there were other persons tried to take the ticket from him and place another in his hand; he resented it, and wished to retain the same ticket; Mr. Blow then requested me to assist the old man up to the polls and let him vote the way he wanted

to; I then interfered, and told those who were trying to force him away that the way the old man wanted to vote I would assist him to vote, if it was necessary; they showed a disposition to turn it into a general riot, and requested me not to interfere, as they did not wish to injure me; they then took him into the ferry-house just across from the polls, gave him a drink of liquor, and put another ticket in his hands, brought him over to the polls and made him vote, and made their boasts of it afterwards."

Question. Did these parties use any force to make him vote their ticket?

Answer. Well, yes; I should think they did, and picked him up and nearly carried him.

Question. What sort of language did they use to Blow?

Answer. Nothing in the old man's case.

Question. Did you hear Donnelly abuse Blow?

Answer. I heard Donnelly abuse Mr. Blow; at least I took it as abuse; I was somewhat surprised to hear it, as I took Mr. Donnelly for a gentleman; I have always thought so, except that time; I have had no reason to think otherwise.

Question. If Mr. Blair's friends had acted in the same spirit as that manifested by the friends of Barrett, would it not have led to violence?

Answer. Well, I'll answer that by stating a little circumstance that transpired: I challenged one little Frenchman's vote there; he had been born in that country, but lived in Illinois, I think they said, some four years; high water drove him from the bottom over there, and he came to Carondelet some month and a half or two months before the election; the mayor of Carondelet stepped up and begged me to desist; he said if I pursued this course I would get injured; so I stopped at once, and the man voted.

This is the evidence by which the contestant alleges that he has proved the friends of the sitting member guilty of force and violence. The mayor begged the witness to desist, telling him if he pursued such a course he would get injured, and on this testimony is founded the charge of violence!

Madison Miller (pp. 544, 555) testifies to the occurrence respecting the vote of the old beggar, but gives a very modified version of Mr. Blow's story. He saw nothing of the bodily carrying off of the old man, nor was he of the timid character of Mr. Caddy and Mr. Blow. He stood at the window all day challenging every one presenting himself who was suspected of doing so improperly and without right. He performed this duty without instruction from any one, and without fear of any kind, and he swears that he saw no one prevented from voting on that day.

Mr. Blow's statement of the transaction is evidently as much exaggerated as were the fears of Mr. Caddy.

Thus far we have cited only the testimony of contestant. The following is the testimony of the witnesses called on behalf of the sitting member:

Mayor Chartrand testifies (p. 869) that he was at the election at Carondelet. He says:

I went to the polls before they were open—my business was to see that the polls were open in due time; I remained there all day, excepting the time that required me to get my meals, and a short time I was in my store during a heavy shower of rain.

Question. Was there any disturbance there of any kind, noisy or violent conduct?

Answer. There was no disturbance during the day, nor any violent conduct on the part of any one; in fact, it was the most peaceable election that ever was held in Carondelet; and I say that the deportment of the persons at the polls will compare with the deportment of any other citizens for their good conduct and behavior.

Question. Did you see four men, or any other number of men, pick that old man up and carry him away bodily in their arms from where he was talking with Mr. Blow?

Answer. No, sir; he walked off, unrestrained by any one.

Question. Did you see E. J. Donnelly jerk the old man away from where he was standing near Mr. Blow?

Answer. I did not; I was on the alert all day long to see that the voters were not tampered with—that they should vote as they pleased; and for that purpose I had a special police of eight picked men—men who did not interfere in elections. They were determined that good order should be maintained on that day.

E. J. Donnelly, the man who, according to Blow, interfered with the old man, and compelled him to vote against his sentiments, testifies (pp. 863, 864) that he was present at the election. He says:

I saw an old gentleman receive a ticket from Mr. Blow. I then asked the old gentleman to let me see it. When I asked him the question if he was an Irishman, he answered he was. I asked him if he was a citizen; he said he was. I then asked him if he had his papers with him; he said he had. I then asked him the question if he would go to a man for a ticket who, two years previous, represented this county in the senate as the champion of the know-nothing party; he said no, he wouldn't. Mr. Blow then remarked that there was no better friend to the Irishman than the one whose name headed that ticket, meaning Mr. Blair. I told him that I had not spoken of Mr. Blair, but alluded to himself. Mr. Blow then remarked that he could do more in St. Louis than he could there, and therefore he would go up. That is all I have had to do with any man's voting.

Question. If any one had picked up the old man and carried him off bodily, would you not have seen them?

Answer. I would.

Question. Did anybody take the ticket away from the old man by force?

Answer. Not that I am aware of.

Richard Southord (pp. 834, 835) says, in answer to the question—

Were you at Carondelet, and at the polls, during the day of the last August election?

Answer. Yes, sir.

Question. What was the conduct and bearing of Mr. Barrett's partisans and friends at the polls during that election?

Answer. There was nothing extraordinary in their conduct that

I could see, excepting that which usually occurs at elections; his friends were anxious that he should be elected.

Question. Any riotous or disorderly conduct there?

Answer. Not that I saw.

Question. Were you there all day?

Answer. Yes, sir, with the exception of going to breakfast and dinner.

Question. Would you have likely seen it if there had been?

Answer. Yes, sir.

Question. Did you see any mob there?

Answer. No, sir.

Question. Did you see Captain Madison Miller there during the day?

Answer. I saw him there during the greater part of the day?

Question. Did he exert himself pretty strenuously in favor of Mr. Blair?

Answer. He stood at the opening, where the voters put in their ballots, and challenged all parties he felt disposed to; and, from what I could see, I suppose he challenged all whom he had any doubts about their qualifications for voters.

Question. Did anybody interfere with him at all?

Answer. None that I saw.

Question. Did you see any of Mr. Barrett's partisans and friends interfere with any of Mr. Blair's friends or partisans?

Answer. Only except so far as talking to them.

Question. Anybody prevented from voting, then, who wanted to vote?

Answer. Not that I saw; on the contrary, every man was given a full chance to vote.

Question. Did you see Mr. Blow there that day?

Answer. I did.

Question. Did you see an old man get a ticket from him?

Answer. Yes.

Question. Tell all the circumstances attending the old man's getting the ticket.

Answer. I saw the old man take a ticket from Mr. Blow; I was standing about ten feet from Mr. Blow, facing him; upon the old man's taking the ticket several men went up to him, and I saw some one get the ticket from him; after this had occurred the old man came close to me; there were some parties between Mr. Blow and myself at this time; I said to the old man: "That's a black republican ticket; you are a democrat, and don't want to vote any such ticket;" thereupon I asked him to go and take a drink; upon the invitation he went along, and we both took a drink; I then gave him a Barrett ticket—a national democratic ticket; we went back to the polls; he voted; I suppose he voted the ticket I gave him; I then asked him to go and take another drink; he went and took a drink, and appeared well satisfied.

Samuel Knight testifies (p. 823) that he was one of the judges at Carondelet at the election in August, 1858; that he saw no misbehavior more than at any election, only a heap of loud noise and talk-

ing; people will talk at elections; there was no violence; everybody voted as they pleased and when they pleased; nobody prevented them. The judges allowed no illegal voting. There were a number of old residents outside of the corporate limits of Carondelet who voted there at the election.

Jacob Steins swears (p. 822) that he was a judge of the election at Carondelet, and voted for Mr. Blair.

Question. Was there anything like a mob or riotous body of persons about the polls on that day?

Answer. Nothing at all that I saw. There was no squabbling or quarrelling, no fighting, nor anything at all that I saw. Everything was peaceable.

Question. Was it not as peaceable an election as you have ever seen held in the town of Carondelet?

Answer. It was as peaceable as any day I have ever seen.

Question. Was any police force necessary to protect the polls?

Answer. During the shower in the afternoon we called the police to clear the crowd away from immediately around the polls. Everybody gathered in from the rain, and we had to have the room cleared.

Question. What is the population of Carondelet?

Answer. I don't know. There may be between two and three thousand.

Question. Were there many persons voted in the city who lived outside of the corporate limits?

Answer. It may be. There were a great many voted there who don't live in the city of Carondelet.

The contestant and several of his friends voted at this precinct, probably for the reason that induced many others to do so, viz: on account of the interest taken in the election of county judge.

This is the whole of the testimony bearing on the case of the beggar. The conduct of Donnelly may have been, and doubtless was, improper. But there is scarcely an election held in the country in which an exaggerated parallel is not to be found. And to argue that it furnishes ground for setting the election aside would be idle, as long as the emulation excited by political contests continues to exist. Such scenes are inseparable from the rivalry generated by popular elections in a free government; and happy is the community that has nothing more to deplore than a little intemperate zeal on the part of those whose passions are brought into play by the exercise of functions which are at once the source of office, power, and emolument.

The next case of force and violence referred to by the contestant was at the Gravois precinct. The contestant stated in this argument that the outrages and violence committed at this precinct were distinctly proved by Martin Fleisch, John Hilton, Peter Hildebrand, and others. Mr. Fleisch testified (pp. 522, 523) as follows:

Question. Did you see Mr. Barrett there (at Gravois) that day?

Answer. Yes, sir.

Question. What was the bearing of his friends there—his partisans?

Answer. They seemed to be pretty free for Mr. Barrett, most of them.

Question. Were they overbearing towards those who were not for Mr. Barrett?

Answer. That I can't say.

John Chilton, (p. 731,) another witness, examined in relation to the manner in which the election was conducted at this precinct, states that he was at the polls two hours, but does not speak of force, violence, or outrage of any kind. He was one of the witnesses referred to by contestant as proving this state of things.

Peter Hildebrand, (p. 756,) another witness of contestant, whose testimony is referred to as establishing this charge, testifies as follows:

Question. Did you challenge any person who offered to vote there?

Answer. Yes, sir, I did.

Question. Who was it offered to vote?

Answer. I do not know their names; there were nine altogether.

Question. Were they sworn?

Answer. No, sir.

Question. Why were they not sworn?

Answer. They would not swear.

Question. Did one of the judges threaten you for challenging them?

Answer. He told me to go out of the house; I had no business there.

Question. Were persons deterred from challenging votes by threats made by the judges?

Answer. No, sir, I don't think they were.

Question. What did Haight (the judge) threaten to put you out of the room for?

Answer. I asked them (persons offering to vote) if they were citizens, and they said they were, and had their papers. Haight said they could vote; I said they could not unless they produced their papers or swore they were citizens. Haight then jumped out of his chair and said I had nothing to do with it, and should go out of the room; I told him I would not do it till I got ready.

Question. Did he say anything about whipping you?

Answer. No, sir.

On this testimony the contestant founds his charge of force and violence; and it is also relied on to prove corruption. Any attempt on the part of the undersigned to show how utterly this testimony fails to establish such force and violence as would vitiate the election would not only be superfluous but absurd. If such passages as this between the judge and Hildebrand were sufficient to vitiate the poll, it would be vain to hold elections at all; for there is scarce an election district in the Union that would stand the test of a scrutiny.

But hear what Robert Hunt, esq., an old resident of the precinct, says:

Question. Was every man allowed to vote there just as he pleased?

Answer. Yes, sir; everybody was free to vote for whomsoever he pleased. Campbell Link, superintendent of county farm, electioneered for the American ticket all the time he was there.

To avoid necessity of future reference to Mr. Hildebrand, we beg here also to quote the occurrence with Mr. Haight, on which the contestant has laid so much stress, as it was seen by Mr. Hunt.

Question. Did you see a crowd come up there, and see them challenged, and see and hear one of the judges threaten to whip the man that challenged them?

Answer. I did not see any such thing. I will state what I saw in regard to it. There was a crowd of Irishmen, I think eight or nine, came up there to vote; they were strangers to the judges; they did not know them. One of the judges, Mr. Haight, acting as spokesman, a very competent man to attend to such business, asked them if they were citizens of the United States, and the foremost of them said they were all citizens, all voters. He asked the other two judges if they knew either of them; they said that they did not know them. Then Haight said that as they did not know them to be citizens they would have to be sworn that they were citizens of the United States, or show their papers, which they refused to do. Haight called my attention to it, and I told them that was the law, that they had to do so, so I thought; then it was that a man by the name of Hetterbrand, Peter Hetterbrand, made objections, and said that they had as much right to vote as any one, and hit his hand on the table; to which Haight objected, as he did not want the judges to be disturbed in any such way. I think that he told him that he would put him out of there mighty quick if he went on that way.

Passing from the charge of force, violence, and intimidation at the Gravois precinct, the undersigned are brought to a consideration of the testimony to support a like charge respecting the conduct of the sitting member and his partisans at the eastern district of the ninth ward. Hiram Ogden (p. 441) is the principal, if not the only, witness who testifies to what the contestant calls an intimidation of voters at this precinct. He states that the judges were Philip McDonald, Charles W. Horn, and John Armstrong. The first was a democrat; the two latter republicans.

Question by Mr. Blair. You say their conduct was disagreeable. Did they use threats to deter voters from voting?

Answer. Yes, sir; I challenged a boy who swore himself he was only nineteen years of age, and his party, or the party accompanying him, threatened to pull me in two. I was sitting in a window about three feet above the ground.

Question. Whose political party did the men belong to who brought up this boy to vote?

Answer. I cannot say, but evidently not to mine.

Question. Well, to the best of your knowledge, whose ticket was it that he had in his hand?

Answer. Well, to the best of my knowledge, the ticket the boy had in his hand was a ticket to be voted for Breckinridge; my knowledge amounts to nothing.

Question. Did you challenge the votes of many persons brought up by Mr. Barrett's friends to vote at the polls?

Answer. I did.

Question. Did McDonald, the judge, object at any time to challenged persons offering to vote?

Answer. He more than once told me to mind my own business, and

also a man who was challenging on the other side of the office for the American ticket.

Question. Did Esquire McDonald use any threats towards you, or the young man you have spoken of as the friend of Mr. Breckinridge, to deter you or either of you from challenging?

Answer. The young man made some remark to him after the last expression, which brought out something from Esquire McDonald, amounting to this—that he would have him taken away; and he defied him to take him; that he was exercising the right of an American citizen, and would stay as long as he pleased. This is about all I know about the transaction.

Question, on the cross-examination. Was any voter deterred from voting by reason of any threats made at the polls?

Answer. Not to my knowledge; on the contrary, greater facility was given to the voters.

Question. Who was the man that threatened to pull you in two?

Answer. He was in company with the young man whose vote I challenged; I don't know his name.

Question. Was he a friend of Mr. Barrett or Mr. Breckinridge?

Answer. I cannot say; my impression has been given.

Question. What was your impression?

Answer. My impression was he was a friend of Mr. Breckinridge.

Question. Was any man prevented from voting by jostling?

Answer. Not to my knowledge.

This comprises the testimony relative to the eastern precinct. The following embraces all that is material in reference to the western precinct:

William Bailey, one of the judges, (pages 644 and 652,) testifies as follows:

Question. Did Captain Wade try to intimidate anybody who came there to vote?

Answer. No; he was not large enough; he was too small; unless it would be by his noisy and drunken conduct.

Mr. Osburg, another of the judges, is asked by Mr. Barrett this question:—(See p. 656.)

Question. Was anybody prevented from voting there?

Answer. No; I think not.

Mr. William Buckman, another judge of the election at this precinct, is asked what he means by a mob. He answers, "a large collection of people."

Question. Then, if there had been a large gathering of people at one of Mr. Blair's meetings before the election, would you have considered it a mob?

Answer. Yes, sir; according to law.—(See p. 663.)

He is asked if he knows of any one who was prevented from voting by the disturbances there on the day of the election. He answers that he knows of only three, whose names he gives, viz: John H. Knopper, Frederick Witte, and James Hanson. He states that when the polls were closed, ten minutes before the regular time, they were at the window and could not get to vote. These men have since stated they intended to vote for Mr. Blair.

Declarations of persons as to what they intended to do under a different state of circumstances is not evidence. There is therefore no evidence that any one was prevented from voting for the contestant by closing the polls before the hour fixed by law. But if there had been persons prevented from voting in consequence of this act, on whom should the blame lie?

It may be asserted that the act of closing the polls ten minutes in advance of the hour appointed by law was a legitimate result of the disturbance, but the undersigned think not. The conduct of Captain Wade in striking the judge was improper, yet the provocation of being called a "liar" by the judge will be generally understood as an invitation to a blow. Having so far forgotten himself as to deal in opprobrious epithets, he was not justified in making the blow which he received an excuse for closing the polls and depriving voters of the right of depositing their ballots. It is not every petty squabble that takes place on election day, when excitement is generally at the culminating point, that will justify the officers of the election in closing the polls and shutting out votes. A timidity so excessive as this ought not to be countenanced.

It seems, however, so far from the contestant having lost anything by this act of the judges, a majority of whom were his political friends, he was the gainer thereby to the extent of seven or eight votes.—(See McClure's testimony on page 29 of this report.)

But the offence charged upon Captain Wade is of no very aggravated a character. Mr. Bailey, the judge who called him a liar, was a young man, about twenty-one or twenty-two years of age, and the blow amounted, it seems, to no more than a slap in the face. At any rate, it appears the disturbance was limited, as far as actual violence is concerned, to the blow given by Captain Wade to Mr. Bailey.

The following testimony shows clearly that there was no violence as would in any manner justify the rejection of the return from this precinct. A mere fight, or series of fights, even if the election officers should be involved in them, is no ground for throwing out the vote of the precinct at which such fighting took place. There must be an organized, concerted design to intimidate and overawe, in order to justify the disfranchisement of the whole community of a precinct, ward, or county; a mere accidental conflict between two or more persons is not sufficient; this is well settled by congressional precedents. The undersigned extracts the following brief and accurate report of several cases on this point from the argument of Mr. Barrett's counsel:

The first case in which this question of force came up was that of Trigg *vs.* Preston.—(Cont. Elect. Cases, 78.) In this case the brother of the sitting member was a captain in the army, and was the active agent of the sitting member at the election in Montgomery county, Virginia. It was proved that his soldiers marched round the court-house several times, stationed themselves at the doors by which voters had access to the judges, threatened to beat any one who meant to vote for Trigg; did knock down some; were themselves polled in a body for the sitting member; that one of them knocked down a magistrate who was attending at the election; that in the evening they got into a row with the country people; and finally, after the

polls were closed, exchanged shots with some of the country people. The committee found all the foregoing facts, but the House confirmed Mr. Preston in his seat—his majority being only ten votes upon the returns. The speeches made on the report of the committee indicated clearly that in the 3d Congress the statesmen of that day discountenanced the plea of violence and intimidation, unless the facts proved showed the preconceived design to overawe the voters, accompanied by the ability to effect it.

The next case was that of Biddle *vs.* Wing.—(Cont. Elec. Case, 504.) The plea then presented by the contestant was that he would have received a majority, but his friends were intimidated, because the deputy sheriff struck several persons on the head, and by that means prevented them and several others from voting. The rule laid down was that if, from any cause, the voter failed to present his vote, it could not enter into a computation of the votes or affect the election, *unless corruption shall appear sufficient to destroy all confidence in the purity and fairness of the whole proceeding.* The argument in the Maryland contested election case before the last Congress acknowledges the validity of this rule, which is quoted as authority by both the majority and minority of the Committee on Elections. After summing up the law as set forth by the British cases, the majority say: "Yet it seems necessary to the existence of such a riot as will avoid an election that it shall be founded on system, or at least upon premeditation; *for a casual affray* or an incidental disturbance, without any intention of overawing or intimidating the electors, cannot be considered as affecting the freedom of elections."—(Rog. on Elect., 242, and Trigg *vs.* Preston, Cont. Elec., 78.) The majority then cite Preston's case and Wing's case, and say: "In neither case was there anything amounting to a riot or an obstruction to the polls shown." We must remember the evidence on which the majority of the committee proceeded. Without entering here upon an analysis of the voluminous record on which they acted, it may be sufficient to observe that the committee reported to the House, by their chairman, that "in some to a greater extent than others, but in all, (the wards of Baltimore,) to a most culpable extent, violence, tumult, riot, and general lawlessness prevailed. That, as a consequence, the reception of illegal votes and the *rejection* of legal votes, the acts of disturbance and assaults committed on peaceable citizens, and the intimidation of voters *so predominated as to destroy all confidence in the election as being the expression of the free voice of that congressional district.*"

Edward Costello's evidence, as well as that of several other witnesses which follows, shows how far the present case falls short of what is required by the established precedents. Costello's testimony is as follows:

Question. Did you see any fighting at the western precinct of the ninth ward?

Answer. No, sir.

Question. Was the voting going on while you were there?

Answer. I was not able to see; my back was turned towards the polls. I was at the polls but a few moments, where they received the

ballots, as you will perceive by my testimony in chief, when I was jostled away from the polls.

Question. Do you know of any one who was prevented from voting at that poll?

Answer. No, sir.

This witness is the brother of the candidate for sheriff who ran on the Blair ticket.

The testimony of Moran is not cited, being totally unreliable.

On the other hand, Grace and Wade are examined, and deny that there was any one prevented from voting. William McClure testifies (page 825) as follows:

Question. What time of day were you at the western precinct of the ninth ward?

Answer. About four and about seven in the afternoon; I stayed there perhaps the first time about an hour or an hour and a quarter; the second time about half an hour; I was again there about nine at night.

Question. When you were there at four o'clock what was the conduct and bearing of Mr. Barrett's partisans and friends at that precinct?

Answer. They appeared to be a little overflowing with the spirit of enthusiasm for Mr. Barrett's cause, I think, though not more highly excited in his favor than Mr. Blair's partisans, whom I had seen at other precincts, in his favor; nothing rude or unmannerly in their conduct towards those of any other party who chose to vote.

Question. Do you know of any persons who desired to vote for Mr. Barrett and had not an opportunity?

Answer. Whilst I was there, late in the afternoon, just before the polls closed, several men came up with Barrett tickets in their hands, say eight or ten—I won't be positive, there may have been six, there may have been twelve; I won't be positive, say eight or ten; they were asked where they lived; they said in the seventh or eighth ward; either in the seventh or eighth ward. I was very much excited about that time, and may have forgotten. The judges refused to let them vote. I insisted they had a right to vote in that ward for Congressman, which was the only party on that ticket they were particularly anxious to vote for, and I told the judges it was impossible for them to get to their own wards that night to vote; it was too late. One of the men said he had just come from his work; he had just quit and hadn't time to vote before that day. But they refused to let them vote. There was no fuss made by the democrats, even on that occurrence.

Captain Wade says of his difficulty with Buckman, p. 827.

Question. Was there any row there that day?

Answer. Within four minutes of the closing of the polls, by my watch, I was standing in front of the polls, with some three or four of the friends of Mr. Barrett waiting to vote; at the same time there stood a friend of Mr. Barrett's next the table of the judges, who desired to vote, and the judges, after having detained him some eight or ten minutes, I should judge, before this time of the four minutes, asking him questions which I thought irrelevant to the occasion and the pur-

pose, I remarked that the man had been living in the ward for several years, and ought to be allowed to vote, as there were several there who knew him to have resided there; that had he been a black republican, or voted the black republican ticket, he would have been allowed to have voted immediately. One of the judges immediately asked me if I considered them all black republicans, meaning the judges. I said I did, as I knew three of them, and knew them to be of that party. The one who spoke to me I did not know, though he knew me. I answered I did. He then remarked that I lied. I then struck him in the face with my open hand, as I would do any one else under similar circumstances. Mr. Bauchman, or Buckman, immediately closed the polls; previous to which, however, he commanded Policeman McDonald to arrest me.

William J. Mitchell testifies, pp. 887, 890, as follows:

Question. Were you at the western precinct of the 9th ward on the day of election?

Answer. Yes, sir.

Question. Were you there all day?

Answer. All day, but about an hour I was away from there.

Question. How long have you lived in that ward?

Answer. Something over a year.

Question. What was the conduct and bearing of Mr. Barrett's partisans and friends at that precinct?

Answer. They were very enthusiastic, and I believe done all they could to forward his election peaceably.

Question. Did you see any mob there?

Answer. No, sir; that is if I know what a mob is.

Question. Anybody prevented from voting as he pleased and when he pleased?

Answer. No, sir; there was not.

* * * * * * * *

Question. Was there any open space through the crowd to the place where the votes were deposited, through which parties wishing to vote could at all times pass up to the polls?

Answer. I believe that two or three times the crowd was so thick around the polls that the judges called for the way to be opened, which was promptly complied with; I don't think there were ten minutes of the day, all put together, during which this passage was blocked up; and when it was blocked up I do not think it was done by any concerted plan, but the anxiety of the crowd to see how different persons voted.

Question. Did Captain Wade use every endeavor to keep this passageway open?

Answer. He was very active in opening the passage each time it was blocked up; I believe he did.

This witness also describes the insult which the contestant complains of as having been offered to him, personally, at this precinct. We do not know what custom would sanction in St. Louis; but a candidate in any other part of this country, offering to bet $500 on his own election with the men of an opposite party, would expect that he should hear

some such remark as that which gave Mr. Blair offence on the occasion in question.

John Waddell testifies, (p. 890:)

Question. Were you at the western precinct in the ninth ward on the day of election; and how long were you there?

Answer. I was there from one o'clock p. m. till the polls closed.

Question. What was the conduct and bearing of Mr. Barrett's partisans and friends at the polls there that day?

Answer. There was no disturbance that I saw, with the exception of a few words passed between two men.

Question. Who were they?

Answer. Mr. Grace, and Mr. Lolar, I think, was the other man's name.

Question. Was Mr. Lolar intoxicated?

Answer. Very much excited. I did not notice him enough to say that he was intoxicated or not.

Question. Was there a gangway through the crowd to the polls to admit voters passing to the polls?

Answer. There was.

Question. Was that kept clear while you were there?

Answer. It was kept clear.

Question. Did you see Mr. Wade there that day?

Answer. I did, sir.

Question. Was he endeavoring to create a disturbance there at any time?

Answer. No, sir; he endeavored to keep the peace.

Michael Bond testifies as follows, (p. 896:)

Question. Were you at the western precinct of the 9th ward on the day of the last August election?

Answer. Yes, sir.

Question. How long were you there, and what time of the day?

Answer. I was there pretty near all day.

Question. Did you see any friends of Mr. Blair electioneering there?

Answer. I have seen some?

Question. Did anybody drive them away from the polls?

Answer. I did not see anybody drive them away.

Question. Did you see anybody insult and abuse them?

Answer. I did not.

Question. Were persons allowed to vote then whenever and for whomsoever they pleased?

Answer. Everybody had his own chance to vote whenever he liked.

Question. Could friends of Mr. Blair have come there that day and voted and electioneered for him without being insulted and abused or injured?

Answer. I did not see anybody abused by anybody.

The last witness touching this point is Daniel A. Rawlings, the marshal of the city of St. Louis, who voted for Blair, and whose policemen were of the same party, and whose testimony will impress the mind at once with its fairness and truth.—(See pp. 939 to 942.)

Question. Was it peaceable and quiet at the different polls, and as good order observed as at elections generally?

Answer. About the same as we have had usually for the last three or four years. At some polls it was more quiet than usual, and at others a little more noisy; but the same as at other elections here.

Question. In the forenoon of the day of election how many policemen had you at the western precinct of the 9th ward?

Answer. Four were stationed there regularly during the day; at or about twelve o'clock I sent an additional force of four more.

Question. Were you there in the afternoon?

Answer. I was there in the fore and afternoon.

Question. Were you there when, or soon after, Mr. Wade struck one of the judges?

Answer. I don't remember the period of time when this was said to have taken place; I was there a short time before this was said to have taken place.

Question. Did you observe the conduct of Captain Wade and others at that precinct?

Answer. I did observe the conduct of Mr. Wade and others there.

Question. Did your police stationed there receive orders to keep the polls clear that day?

Answer. They were stationed there for that purpose, and had received special orders from the mayor to that effect.

Question. When you visited that precinct during that day were your policemen performing their duty?

Answer. They were, as far as I could see.

Question. From the observation you made there of the conduct and bearing of the friends of Barrett, do you think that the friends of Mr. Blair could have remained there at that precinct and electioneered and distributed tickets for him without danger of personal abuse or injury?

Answer. So far as the abuse is concerned, the friends of either party couldn't stay there and electioneer without receiving a certain amount of abuse from each other; but I saw nothing in the conduct of either to lead me to believe that there was any danger as to life or limb. The friends of each party appeared to be willing to obey the wishes of the city marshal; and at two visits in the afternoon, on that day, they were requested to cross the street whilst they were electioneering, and not to collect so large a crowd around the polls, and they went without any hesitation, and remained there as long as I staid on each visit.

Question. Was not the talk around the polls, and the abuse of which you speak, just such as parties generally make use of when electioneering around the polls?

Answer. About the same when politics run very high, and when a little affected with whiskey or beer. From my observation there was more fuss made in that ward, and at the court-house, than in the whole city put together.

Question. The fuss at the court-house was made mostly by the Americans.

Answer. Can't say that; I think all parties had a hand in it.

No extended comment can be necessary on this branch of the case.

The charge of force, violence, and intimidation is not only not proved but completely disproved by the testimony. When the undersigned recollect that it was the object of the contestant, as well as his duty, to collect all the testimony in his power tending to prove violence and intimidation, and that he undoubtedly did so, they are surprised to find it limited to a hasty blow or two struck by one individual, a contest about a beggar's vote, a few impatient expressions drawn from one or two of the judges by the impertinent dictation of self-elected challengers, and the enthusiastic cheers of an hilarious group of Irishmen, exulting in the privilege of electors and rejoicing in a holiday. From a failure so marked to establish this charge, they cannot otherwise than conclude that the election was fair and peaceful, and conducted on the whole with singular propriety.

Fourth charge.—Employment of spirituous liquor to incite to fraudulent voting.

The proof on this subject is, that when E. J. Donnelly got the beggar out of Blow's hands, at the Carondelet precinct, he took him off and gave him a drink; and that after they returned and the old man had voted, he gave him a second drink; and that parties went occasionally during the day to Wade's mill, where a small quantity of whiskey had been left, and drank there. Wade himself testifies on this subject, and swears that the whole quantity of liquor at the mill, which was about a square from the polls, *did not exceed half a gallon.*

It is alleged by contestant that this was a violation of the law; but no proof that it was so has been produced. It may be doubted, too, whether the mayor's proclamation, which appears to be relied on as rendering the sale of liquor near the polls illegal, could be construed into a prohibition of the use of it, by a private individual, on his own premises. But it is enough to say, that the sitting member had nothing to do with it, and cannot be made responsible for a breach of the law, in this respect, even if it had been shown to be one. There is not a syllable of proof that the liquor at Wade's mill, or elsewhere, was employed to incite to fraudulent voting, or to induce persons to vote more than once, as charged by the contestant. This charge is not proved, and is dismissed without further comment.

Fifth charge.—Fraud and partiality of the judges at the Gravois precinct and the eastern precinct of the ninth ward.

This charge is based on several grounds, some of which go to the competency of a part of the officers to act in consequence, as contestant alleges, of a conviction for *felony;* the other grounds consist of allegations that the judges and clerks were not qualified to act, not having taken and subscribed the oath or affirmation prescribed by law; and that they were guilty of unfair and fraudulent practices in conducting the election.

There is no proof of the conviction of any of the officers who officiated at the Gravois precinct, either as judges or clerks, for *any offence whatsoever.* An abstract of the record of the criminal court of St. Louis has been presented showing that James Horton, one of the

judges, and John H. Davis, one of the clerks of the election, at the Gravois precinct, had been indicted for a misdemeanor at July term, 1849; and that on the 1st of February, 1850, a verdict of guilty was rendered by the jury and a fine of $300 assessed against Horton, and a fine of $100 against Davis, with one year's imprisonment in the county jail. *On the same day a motion was entered for a new trial. That motion was never disposed of, nor any judgment of conviction ever entered.*

This charge fails on several grounds. In the first place the parties were not indicted for a felony; in the second, no conviction *for any offence* ever took place.

The next allegation of incompetency is that the judges did not take and subscribe the oath required by law. This allegation is not confined to the judges who officiated at the Gravois precinct, but extends to several others.

The judges at the Gravois precinct were William Haight, James Horton, and George Margetts; the clerks were Justin Mullenny and John H. Davis. The following is the form of the return certificate, with the jurat annexed thereto:

STATE OF MISSOURI, *County of St. Louis, ss:*

Poll-book of an election held at J. Horton's house, at Gravois Mines, in St. Louis township, being the thirty-second election district of the county of St. Louis, on the first Monday, being the second day, of August, eighteen hundred and fifty-eight, for one representative from the first congressional district of the State of Missouri to the thirty-sixth Congress of the United States; for four senators to the senate of the State of Missouri; for twelve representatives to the general assembly of the State of Missouri; for sheriff, marshal, coroner, public administrator, county treasurer, jailer, school commissioner for the county of St. Louis, and for superintendent of common schools; for justice of the county court for the second district, and for two constables for St. Louis township.

STATE OF MISSOURI, *County of St. Louis, ss:*

We, James Horton, William Haight, and George Margetts, do swear that we will impartially discharge the duty of judges of the present election according to law and the best of our abilities. So help us God.

WM. HAIGHT.
JAS. his + mark HORTON.
GEO. MARGETTS.

Sworn to and subscribed before me the 2d day of August, 1858.

COUNTY OF ST. LOUIS, *ss:*

We, Justin Mullenny and John H. Davis, do swear that we will faithfully record the names of all the voters at the present election.

JUSTIN MULLENNY.
JOHN H. DAVIS.

Sworn to and subscribed before me the 2d day of August, 1858.

WILLIAM HAIGHT,
One of the Judges of Election.

The only informality in this case is, that the judge who administered the oath of office did not add his certificate to the foot of the affidavits respectively taken by the judges and clerks, but simply at the foot of the two, both being on the same page, and one immediately following the other. By the affidavits it appears that both the judges and clerks did, in fact, take and subscribe the oath required by law; and the certificate of the judge at the foot of the affidavit, taken by the clerks, refers to the affidavits of both judges and clerks, practically and in grammatical strictness. In the judgment of the undersigned, this is not only a sufficient but literal compliance with the requirement of the act of assembly, which is in the following words:

"The judges, before they enter upon their duties, shall take the following oath or affirmation, to be administered by one of their own number, or by any magistrate authorized to administer oaths: 'I do swear (or affirm) that I will impartially discharge the duties of judge of the present election, according to law and the best of my abilities, so help me God.'"—(Rev. Stats. of Missouri, Ed. 1855, Sec. 12, p. 705.)

But it is objected that the judge could not swear himself; and as it appears from the face of the return that he was sworn by no one else, and that as Horton, another of the judges, was not able to write his own name, both were disqualified from acting in the capacity of judge, and the election was therefore void. There is nothing in the act of assembly to prevent the judge either from swearing or certifying that he has so sworn. The act requires that the judges shall take the following oath or affirmation before "*one* of their own number," and the form of the oath or affirmation is in the first person, viz, "I do swear that I will," &c, and not in the second person, as "You do swear that you will," &c. The very form of the oath, "I do swear," shows that it is an obligation intended to be assumed upon himself by the party taking it, rather than a formula dictated by another, and merely assented to by him. Nor in this is there anything repugnant either to the language or spirit of the act of assembly prescribing the form of the oath. On the contrary, it is in harmony with the requirements that the oath shall be administered by "one of the judges," and that its form shall be "I do swear," &c.

The objection that James Horton, one of the judges, could not write his own name, and was therefore disqualified to act in the capacity of judge, is equally groundless and unwarranted by anything in the statutes of the State of Missouri. The appointment of a man who could not write his name may be a just matter of reproach against the

county court that appointed him, but it is none against the sitting member, who was neither politically nor otherwise responsible for his appointment. But the illiteracy of the judge is no legal disqualification, and consequently does not invalidate the election or vitiate the return for the precinct.

The next allegation is that the inmates of the county farm or poor-house voted at this precinct, and that the judges fraudulently refused to swear certain voters; also, that the votes from the county farm were cast for Mr. Barrett, and that a large portion of them ought to be rejected. This allegation, so far as that some of the inmates of the county farm voted at the Gravois precinct, is sustained by the evidence. There is nothing, however, in the laws of Missouri which disqualifies objects of the public bounty from exercising the right of suffrage. If the inmates of the poor-house were otherwise qualified, and there is no allegation that they were not, their votes were properly received by the judges. But if the contrary was the case, there is no evidence that any of them voted for the sitting member.

Robert Hunt testifies (p. 811,) that he was at the Gravois precinct on the day of election; that he knows that two of the inmates of the county farm voted, and that there may have been as many as six—not more. He states that Campbell Leich, the superintendent of the county farm, electioneered all the time he was on the ground for the American ticket; and that all the voters from the farm supported that ticket. And this is confirmed by the witnesses of contestant himself. There is no proof that a single illegal vote was cast at the Gravois precinct.

The next branch of this charge is, that the judges "omitted and refused to administer to persons offering to vote, and not known to any of them, any oath, or to make any examination of such persons as to their qualifications," &c.; also, "that the ballots were not counted or opened, but a return made without these formalities, and differing from the actual number of ballots in the box."—(*Contestant's brief, p.* 3.)

To prove these allegations, contestant refers to the testimony of Martin Fleisch, (p. 522,) John Chilton, (pp. 731–'36,) Peter Hildebrand, (p. 756,) and J. F. Long, (pp. 914, 915.) The following is the material part of Hildebrand's testimony:

Question. How many people from the "county farm" voted there?

Answer. I do not know.

Question. Were there a good many of them?

Answer. From what I have seen, I think there were some eight or ten.

Question. Were there any threats made by any other persons there?

Answer. Not that I heard.

John Chilton (p. 731) was interrogated by Mr. Blair, and testifies as follows:

Question. Were you present at the last August election at the polls held at James Horton's house at the Gravois coal mines?

Answer. I was there about two hours.

Question. Did you see a great number of persons voting there whom you had never seen before at that poll?

Answer. No, sir.

Question. Did you see any persons who were strangers to you voting at that precinct that day?

Answer. I saw one or two.

Question. Did you make any remark to any person?

Answer. Yes, I believe I did.

Question. What was the remark you made?

Answer. Mr. Cline asked me about the quantity of votes given at the Gravois, and he asked me if I knew all that were voting there at the time I was there. I told him, no; and he asked me if there were a great many strangers around. I told him, yes. He asked me if I thought they were entitled to a vote or not. I told him I could not tell. He asked me if I knew most of the people living around there. I told him I did not. I knew that most of them were working for us, and I could say no further about it. He asked me where I thought these strangers all came from. I told him I thought they came from the Manchester road, the greater part of them. That is about all I remember passed between us at that time.

Question. When you said that you thought the greater part of these strangers came from the Manchester road, did you mean persons employed in repairing the road?

Answer. Well, the greatest part of them seemed to me to be working in the coal banks. There were some seemed to be working on the road, too.

Question. Were any of them challenged?

Answer. Not while I was there.

Question. Did you make a remark to any person at the polls on the day of election to the effect that it was wrong for these persons to vote there, and you were told that the matter was of no concern to you, and it was none of your business?

Answer. There were some such words as that passed, but I don't remember to whom it was. I didn't pay much attention to it.

Question. Do you know Michael Wandless?

Answer. Yes.

Question. Is he naturalized or of age?

Answer. I believe he claims his vote by coming here under age and his father getting his papers. I believe that is the way he claims his vote.

Question. Is he of age?

Answer. That I can't tell.

Question. Would you judge so from his appearance?

Answer. He looks so.

Question. When did he come from California?

Answer. He never was there.

Question. Recently have not the mines (the Gravois) given out in coal?

Answer. No, sir; they opened them out anew, and are employing more hands than ever they were. I suppose this year there were more than ever there was before.

Question. Have not many of the old miners left there, and their places supplied by new comers?

Answer. Well, they come and go; those who have families generally stop there, but those who have not come and go as they like.

Question. Was it within the last year that the number of hands has been increased there?

Answer. Well, within the last two years there have been a great many more hands employed there than formerly; some of the old hands got their papers out this last year.

Question. The increase you speak of in the number in the last two years, were they generally English people?

Answer. Well, they are generally English, Welsh, and Scotch, from the mining districts.

The testimony of Fleisch (pp. 522, 523) amounts to nothing. On being asked what was the bearing of Mr. Barrett's friends he replied: "They seemed to be pretty free for Mr. Barrett, most of them, but couldn't say they were overbearing towards those who were not for Mr. Barrett."

John F. Long (pp. 911, 915,) swears that he refused to testify to the abstract of ballots in the clerk's office, because the document before it was completed had been in the hands of Mr. Blair, Mr. Rice, and Edward Costello; but he says nothing to impeach the fairness of the judges or other election officers, unless it be found in his answer to a question put by the contestant respecting the appearance of the ballots when the boxes were opened in the clerk's office when a count was made subsequent to the election. The witness answered: "That they (the ballots) had the appearance when the boxes were opened of never having been disturbed from the time the ballots were cast; *but upon a count, and comparing them with the judge's return, I think they had been counted.*"

Another ground for charging fraud is, that the vote at this precinct was much larger in 1858 than it had been in 1856. Whilst it appears from the testimony that the vote at this precinct increased from 80 or 90 votes, in 1856, to 185 in 1858, there is no evidence to satisfy the undersigned that this increase was the result of fraudulent practices of any kind. It appears from the testimony of contestant's own witnesses that there are a number of grounds on which this increase might be accounted for, without imputing it to the receipt of fraudulent votes.

From the testimony of John Chilton, cited above, it appears the coal mines had been opened anew, and that the owners were employing more hands than ever at the time of the election. He also states that many of the miners, English, Scotch and Welsh, had been naturalized shortly before the election But the principal cause for the increase of votes at this precinct seems to have been owing to the very deep interest that was taken in the contest for the office of county judge. The patronage connected with this office, or rather the power of the judge in controlling the stock owned by the county in certain railways, made the canvass one of great activity, in which the friends of the several candidates exerted themselves to the utmost to bring as many voters as possible to the polls. This, taken in connexion with the fact that voters are not confined to their own wards or precincts, but may vote elsewhere, will readily account for the

increase of the vote at the Gravois coal mines. It is in proof that many persons doing business in the city, and who had been in the habit of voting there, voted on this occasion at Gravois, in order to take part in the election of county judge. Mr. Fleisch and Brannon, both witnesses of the contestant, state that they voted at Gravois this year for the first time, although they are old residents in that district. But the testimony of Robert Hunt (pages 811 to 815) shows that the fraudulent and improper conduct imputed to the judges is wholly without foundation; he states that he was present the whole day, knew nearly all the voters, and did not see a single vote cast that he had reason to believe was illegal. He further states that he has resided for sixteen years in the immediate vicinity of the precinct, and is well acquainted with the people generally. Mr. Hunt is therefore better qualified to speak intelligently of the character of the voters than the witnesses who went there from the city on the day of election to make interest for the contestant.

That the testimony has failed entirely to support the charges of fraud and partiality on the part of the judges must be apparent to every one who has taken the trouble to examine it. The allegation of a want of legal qualification in the election officers is no better founded.

Next, as to the proceedings at the eastern precincts of the ninth ward.

The charge is, that the great increase of the vote of the sitting member in 1858 over that of Reynolds in 1856 "was procured by the grossest fraud and deception on the part of Philip McDonald, one of the judges at this poll." According to the allegation of the contestant, Judge McDonald omitted and refused to swear voters, notwithstanding the protest of the other judges, bystanders and challengers; and that the circumstances clearly prove that many fraudulent votes were polled at this precinct by the use of naturalization papers never issued to the parties who presented and voted upon them.—(See evidence of Ogden, p. 441; Roche, p. 728; Clendenin, p. 556; Crouse, p. 633.)—(Contestant's brief, pp. 5 and 6.)

The fact that two out of the three judges who officiated at this precinct were political friends of the contestant is scarcely compatible with the charges he has so unreservedly and positively preferred. How a single judge of the election could have been guilty of such glaring frauds and indecent outrages on propriety as are attributed to him without the consent of his colleagues, who composed a majority of the election board, is a circumstance which requires explanation. The undersigned find it difficult to understand how Horn and Armstrong can be acquitted of all impropriety while their colleague is guilty of such serious violations of duty. The charge is, that they were overborne by their imperious and self-willed colleague. But of this there is not a spark of evidence; and if there were it ought to be very distinct and positive to obtain credence. A judge must be bold and imperious, indeed, who would disregard the remonstrances and protests of a majority of his colleagues, publicly made, and easily proved, as they would be on such an occasion.

The witnesses who are refered to by the contestant, to prove the charges against McDonald, are Hiram Ogden, William G. Clendenin and Henry Cross.

Ogden swears, (p. 441,) "that having come back from breakfast and took my position as challenger, and being in the minority from the appearance of the crowd, abided my time. Some twenty-five or thirty men who had narrow tickets were challenged, man for man. I then said to the judges, Philip McDonald, Charles W. Horn, and Mr. Armstrong, that this course of proceeding was calculated to produce ill-feeling. I was very politely told by a gentleman outside, who was electioneering for that ticket, that I had better keep my mouth shut, accompanied by a remark made by a party living on O'Fallon street, as I was afterwards told, (for I never saw the man before in my life, as I know of,) keeping a doggery between Seventh and Ninth streets, that I was black at heart, and I had better keep myself still, or he would put me through. I now come to the vote of a man that I challenged; he was dressed as a steamboat man, (I took him to be one, at least.) Mr. McDonald said, John, your vote is challenged. He was sworn, and the usual question was put to him: 'How long have you resided in the State of Missouri?' He said he had lived in the State of Missouri six months. He was asked where he had been. Said he had been working on the Hannibal and St. Joseph railroad. Was then asked, by the suggestion of one of the judges, where he came from? Said he came from Indiana. He was asked how long he lived in the State of Indiana prior to coming to the State of Missouri. He answered between four and five years. I then suggested to Mr. Horn, one of the judges, the propriety of asking him whether he was a river-man. He answered no; and Mr. Philip DcDonald, one of the judges, responded, by saying that if a man who had worked on a railroad in the State of Missouri six months was not entitled to a vote, he did not know who was; and the vote was received. I called the attention of one of the clerks to it at the time, to make a minute on the margin of the list of voters, to call the attention to the fact of his having been sworn and voting."

W. G. Clendenin (page 566) swears: "That he was at the polls all day; challenged *two or three hundred persons;* Judge McDonald called Cross a pimp and puppy; he threatened to get a policeman to take him away from the polls; I asked to have the witnesses sworn in a certain way; the judge told me they were the judges of the election, and for me to mind my own business; that I was nothing but a pimp and a puppy, and was trying to keep honest people from voting—working men from voting, were the words he used."

Cross is a witness of the same character and testifies much to the same purport.

This is the material part of the testimony referred to by the contestant to sustain the charge of fraudulent conduct on the part of Judge McDonald. The witnesses do not commend themselves strongly, either by their intelligence or candor. Their bearing is marked with but little of the straightforwardness which inspires confidence; and their character, as disclosed by their conduct and the testimony of other witnesses, entitles them to but little respect. If their testimony had been important, it would, in the view of the undersigned, have but small weight in inducing them to credit charges which acquit the majority of the judges of blame, while they accuse the minority of

the most fraudulent violation of duty, and of duties too, which, if well or ill performed, required the participation of all.

In answer to these charges the evidence of McDonald himself is referred to:

Question. Do you reside in the city of St. Louis?

Answer. Yes.

Question. How long?

Answer. Nineteen years the first of May last.

Question. How long have you been living in the 9th ward?

Answer. I am now two years past a resident of the 9th ward.

Question. Who were the judges of election at the eastern precinct of the 9th ward at the last election?

Answer. Charles W. Horn, John Armstrong, and myself.

Question. What has your occupation been for some years past?

Answer. Since 1840 I have been most of the time a justice of the peace.

Question. Have you an extensive acquaintance?

Answer. I think I have.

Question. To what political parties did Charles W. Horn and John Armstrong belong?

Answer. As far as my knowledge goes they are free-soil democrats, black republicans, both of them.

Question. When persons were challenged at the polls on the day of the election where you were presiding as judge, did you refuse to swear those challenged?

Answer. Emphatically, no; not to my knowledge.

Question. Did you call any persons who were engaged there in challenging against the national democratic party a pimp and a puppy?

Answer. I have no recollection of using any such language. A man placed himself there as challenger whose name I don't know. By his personal appearance I knew him to be a gambler or pigeon dropper. He made declarations which I believed were calculated to provoke a breach of the peace. He declared that he would challenge every man who came up in the garb of a working man, and made it a point to challenge all such persons. All that he challenged were refused, without they would take the necessary oath and answer the necessary questions prescribed by law. Some seven or eight such peremptory challenges were responded to by bringing the papers. Their votes, by the consent of the judges, were received. This course was persisted in by this man until his conduct became so offensive to the bystanders that I was afraid they would use violence, and I told him I would have him removed. My object in this was to prevent a breach of the peace. I now disclaim calling any man a pimp or a puppy. I have no recollection of using any such language.

Question. Were persons applying to vote there and challenged sworn as to their residence in the State as well as to their citizenship?

Answer. As a matter of course; my knowledge would justify pursuing that course; first as to their residence, next as to their other qualifications.

Question. Did the other judges concur with you in the course pursued there that day?

Answer. I think they did, to my knowledge.

Question. Did any vote go in there that day without the consent of the judges?

Answer. No.

Question. Was it peaceable and quiet at the poll?

Answer. Exceedingly so.

Question. You know Wm. G. Clenndennan?

Answer. I don't know him by that name.

Question. You know Henry Cross?

Answer. I only know one man of that name, and he is clerk in the post office.

Question. Wm. G. Clenndennan and H. Cross have stated in their testimony that you called them each a pimp and a puppy, and that you threatened to have them sent to the calaboose; is that true?

Answer. No, sir; it is not.

Question. Did you at any time, or did either of the other judges, refuse to swear a man at that precinct whose vote was challenged?

Answer. No; not to my knowledge.

Question. You know Dennis Murphy?

Answer. I know various persons of that name; I know one Dennis Murphy who was a resident of that ward.

Question. You know of any illegal votes cast for Mr. Blair at the last election?

Answer. I do not, either for Mr. Barrett or Mr. Blair; I would have challenged them.

Question. You know Dennis Murphy, who cuts bacon, up at the North market?

Answer. I know him; and know him to be a legal voter.

Question. While he was electioneering at the eastern precinct of the ninth ward for Mr. Barrett, did he not complain of you whilst acting as judge?

Answer. He did complain bitterly; he brought a man by the name of McKay, who worked in Joe Murphy's, and knew him to be a voter for Barrett; I would not allow him to vote there, unless he would swear that he had not voted in any other ward or precinct on that day, and exhibit his qualifications.

Question. Did not Dennis Murphy complain of you during the day as being too favorable to Mr. Blair?

Answer. I don't know that he named either Blair or Barrett; he thought I was too strict.

Question. You know of any illegal votes cast for Mr. Blair, on the day of election, at any other precinct?

Answer. No; I was in that room all day; as to hearsay, I heard enough of that, but don't know anything about it.

This closes the testimony relative to the conduct of the election officers in the eastern precinct of the ninth ward. It is not necessary to decide whether the conduct of Judge McDonald was, in all respects, unexceptionable or not. It is very certain, however, that there is no evidence of fraud, or a disposition on the part of McDonald or any

other of the officers, to prevent a fair expression of the popular will. This branch of the charge, not being sustained by proof, is dismissed.

The western precinct of the ninth ward.

The allegation respecting the manner in which the election was conducted at this precinct does not impute fraud to the judges, but violence and illegal voting to the friends of the sitting member.

Patrick T. McSherry testifies (pp. 472, 473) that he heard there were no tickets at the western precinct between two and three o'clock, and that he went up in a buggy with tickets. It was raining very hard when he got there. A lot of fellows were round the polls, mostly Irish, as he supposed, and all appeared to be drunk. As he stopped his horse four or five of those fellows came and remarked "there is a nice gentleman that was going to vote for Mr. Barrett." He told them he had come to bring tickets for Blair. They said they didn't want any of those tickets, they were all Barrett men. His horse took fright; he finally stopped him, and then looked round for a policeman. Seeing none he went to the police office. He afterwards went again to this precinct and saw gangs of men running to and from what he took to be a mill round the corner, shouting and making a noise. He tried to see if the judges couldn't put a stop to the proceedings.

Question What proceedings?

Answer. Very loud and abusive talk to those who differed with them and were disposed to vote civilly.

Question. Did this abusive language come from the friends of Mr. Barrett?

Answer. They were shouting for Mr. Barrett and the democratic ticket.

The idea of the witness as to what constitutes abusive language does not seem to be very well defined. Shouting for Mr. Barrett and the democratic ticket may have been very disagreable to a political opponent, like Mr. McSherry; but it can hardly be termed abusive, much less as constituting an offence, to be visited by setting aside the election in the precinct.

Question. Where did they get the liquor?

Answer. I presume they got it in that mill, but I can't say; they were coming to and from the mill, round the corner from the polls. I heard two men exclaim that was damn fine brandy they got around the corner *at the planing mill*. I will not be postive *about the mill*, but it was around the corner; my memory is not distinct about it.

Question. Did Barrett's party seek to intimidate those who were opposed to them?

Answer. I thought so from their manner; so much so that I went to the chief of police to have men sent there.

Question. Was any one prevented from voting at the western precinct of the ninth ward?

Answer. Not to my knowledge. There was a great crowd around hooting for Mr. Barrett.

Question. Did you see any fighting?

Answer. No, sir? I could have had one myself, if I had been so disposed.

Edward J. Costello (page 589) went likewise to take free democratic tickets to this precinct; did not see any place to lay the tickets; was directed across the street and there found a bench where he could lay them. Met Mr. Grace, who said, Costello, what are you doing here? I come here, as is my privilege, to leave free democratic tickets for distribution. He said you had better go away from here with those tickets, they will injure the election of your brother. Witness then repeats a good deal that was said by Grace about know-nothings, and about his candidate believing a negro as good as an Irishman, and that his election would bring down wages to Chicago prices, fifty cents a day. He (the witness) then proceeds to state that he told Grace in reply, that his (witness's) father was an Irishman, and his mother an Irish woman, and that he had as good a right at that poll as as any free white man or Irishman in the State; that he had been raised there, lived sixteen years in the city and county as a voter, and had never been driven from the polls or assailed at them; and that it, if it had come to that pass, that they were to be driven away for distributing tickets, it was time they should come armed with shot guns, revolvers, and bowie knives. Grace said we should like to see you come in that way; show your tickets. Witness said, show me yours; Grace held his tickets up in his hand; said, you shall not have my tickets; what do you want with them? I then said the gentleman at the head of your ticket is accused by Mr. Blair of running his nose into know-nothing lodges; he said it was a damned lie. Witness said, there is a man standing right against you with the same tickets in his hands, and I have been informed he was the vice-president of a know-nothing lodge, and his name is Captain Wade. Who is that man, Mudd, said Grace, that you have on your ticket, with the balance of the know-nothings? Witness replied, he did not know; that some one hallooed out, "show your tickets, show your tickets;" that he (witness) took part of his tickets, probably about a fourth part of them, and said, if you are ashamed to show your tickets, I am not ashamed to show mine; that he was holding them in his hand, repeating he was not ashamed of them, when somebody in the rear jerked them from him; they were scattered and torn, and a great huzza raised, and cries of turn him out, drag him out, the damned traitor. Witness says, he remarked that he thought it was bad conduct, and commenced backing out; that when he got to the curb-stone a man told him he had better go away from there, that it was a bad crowd to be in, and he had better put up his tickets; that he told this man he had never been driven from the polls in his life, but that he thought discretion was the better part of valor in that crowd, but that he said he would not go till he was ready.

The witness proceeds through more than two pages of this rambling, incoherent, and irrelevant nonsense, and concludes by stating that some one called out to him: "Costello, I want to speak to you; you had better go away from here, out of this crowd; you will get hurt here; I am a friend of yours, and would not like to see anything occur that you should get injured; says he, there is a crowd around that would

not stop at anything; the sooner you get away the better. He then heard a noise about thirty steps from where he was standing; he saw Mr. Lowler, the calaboose keeper, surrounded by a party of the same crowd; I remarked it is time to go; there is a row kicked up, I suppose, with another renegade Irishman. I stood for a few minutes, looking in the direction where Mr. Lowler was surrounded by some persons I presumed to be his friends, and I walked away from the precinct. I went home to my dinner, and thought things had come to a bad pass when men should be insulted and driven from the polls for supporting or expressing their political sentiments; that all the time I was there, there was a large crowd surrounding Mr. Grace and Mr. Wade—what I should call the check shirt gentry, non-voters, unnaturalized citizens, not citizens of county or State, imported on railroads and steamboats. That is my opinion."

This comprises but a small part of the random colloquy of the witness, addressed occasionally to himself, sometimes to his interlocutors in the crowd, and at others, by way of explanation, to the examining magistrate. That he has no proper conception of the object of an oath, and but little regard for the obligation it imposes, is apparent from the character of his statement. Such testimony, if reckless, is nevertheless harmless; the bad motive is defeated by the vanity which insists on reasoning upon facts as well as recounting them.

But, when he comes to be cross-examined, he admits that he saw no voters brought by steamboats or railroads; that he saw no fighting; that he knew no one prevented from voting; that no one attempted to strike him.

Wm. Bailey, one of the judges, says there were disturbances all day; that Captain Wade was the prime mover, and Grace took part in it; they seemed to take an extraordinary interest in electioneering; they threatened and insulted those opposed to them, and especially Mr. Blair and Mr. Rice. When Mr. Blair came, it was the opinion of the judges that an assault would be made on him; *but there was not.*

The testimony of this witness is very contradictory. He speaks in his examination in chief of the threats and insults given to Mr. Blair and Mr. Rice by Wade and Grace.

On his cross-examination he could not say that either Wade or Grace used any insulting language to Mr. Blair, and he admitted that Captain Wade did not try to intimidate any one that came there to vote. He states, also, that there was no illegal voting at this precinct unless parties perjured themselves.—(pp. 644 to 651.)

Charles Osburg, another of the judges, testifies (p. 665) that Grace brought up a few men to the polls, who were sworn, and being decided not to be legal voters he went away satisfied.

Question. Did any one refuse to swear who was afterwards brought up again drunk and then took the oath?

Answer. No.

He also says that no one was prevented from voting.

William Buckman, another of the judges, testifies (p. 659) to the same facts substantially. He says three persons were prevented from voting by the closing of the polls.

It has been distinctly proved by another witness that the closing of the polls resulted in a loss to Barrett and not to Blair.

The following witnesses were examined by the sitting members, touching the proceedings at the western precinct of the 9th ward on the day of election.

Daniel R. Grace testifies (p. 804) that he was at the polls in this precinct from ten minutes after they opened in the morning until they closed, with the exception of a few minutes at dinner time; he saw no disturbance during the day except the policemen arresting Captain Wade, he going peaceably with them; this was about fifteen minutes before the polls closed; there was no friend of Mr. Blair prevented from voting that day; there was a gangway kept open to the polls at least three feet wide, and there was no attempt to prevent any one from voting just as he pleased. Rice was there, rushing through the crowd, forcing people about, taking possession of the door and remaining there an hour or perhaps more. Costello was there, electioneering for Blair and his brother; he was very much excited; saw no one take his ticket from him; was acquainted with most of those about the polls that day; don't believe there were ten that I did not know; do not think there were any illegal votes cast at this precinct.

The difficulty between Wade and the judges was as follows: a man came to the polls to vote with his dinner can in his hand; he wanted to vote, but was a citizen of the eighth ward, but did not want to vote for ward officers, only for county officers; before he could get to his own precinct he thought the polls would close; he wanted to vote for Mr. Barret; Captain Wade went with him to the door; the judges would not receive his vote because he lived in the eighth ward; Captain Wade told him he only wanted to vote for congressman; they would not allow him to vote at all; the man was willing to make oath that he didn't want to vote for any but congressman, and that he was a legal voter; he looked like a working man; Captain Wade tried to get the judges to receive his vote; they would not do it; he told them they were all black republicans; one of the judges said it was a lie, and Captain Wade slapped him in the face; that is the whole circumstance just as it happened; he saw no persons under the influence of liquor except Lawler; knows of no liquor being furnished to the voters that day.

Witness saw Lawler assail two parties during the day.

Wm. P. McClure testifies (p. 824) that he was back and forwards at the polls all day, having visited twelve or fifteen different precincts. Mr. Barrett's friends were peaceable and orderly; he did not see a single blow struck during the day; never saw people so peaceable and orderly where they appeared to feel so much interest; was at the western precinct of the ninth ward late in the afternoon, when several men came up with Barrett tickets in their hands, say eight or ten; they said they lived in the seventh or eigth ward; the judges refused to let them vote; witness insisted they had a right to vote for congressman, and told the judges they could not get to their own ward in time to vote; they were refused permission to vote; the democrats made no fuss on account of their rejection.

Wm. Wade testifies (p. 826) that he was at the western precinct of the ninth ward the whole day. Mr. Blair's friends were there with

tickets all day; the polls were kept open; everybody had access to them; there was no interruption to any one that wished to vote; that within four minutes of the time of closing the polls, by witness's watch, some friends of Mr. Barrett were at the polls waiting to vote; they were detained eight or ten minutes with questions that witness thought irrelevant; he told the judges that he thought they ought to be allowed to vote; that they were residents who had lived there for several years; that if they had been black republicans they would have been allowed to vote; that on this remark being made by witness, one of the judges asked him if he considered them all republicans; he answered that he did; the judge, Mr. Baily, called him a liar, and witness slapped him in the face; Mr. Buckman and the judges closed the polls, and directed McDonald, the police officer, to arrest witness, who surrendered himself quietly to the officer.

Witness saw Costello at the polls; he was not molested in the slightest degree to his knowledge; there was no row; Mr. Lawler, a partizan of Mr. Blair, had a dispute, but there were no blows; in order to quiet the dispute, witness induced Lawler to walk with him away from the crowd; nobody was driven from the polls; could not have been without his knowledge; there was no posse or crowd of men in favor of Mr. Barrett that attempted to get possession of or carry the polls; he was there when Mr. Blair came; he was not insulted by any one; saw no illegal voters about the polls attempting to vote.

But it is unnecessary to pursue the investigation further. Wade acted improperly in striking the judge, but there is no evidence of any organized, systematic violence, or of any attempt to overawe or prevent persons from voting—nothing which authorizes even a suspicion that all was not fair.

Sixth charge.—Fraud in counting the votes.

It is alleged by contestant that the votes given at the Gravois coal mines were not counted. This charge is based on the testimony of John F. Long (pp. 914, 915.) This has been already referred to. Long says when the boxes were opened at the clerk's office for the purpose of making the abstract "the ballots had the appearance of having never been disturbed from the time they were cast; *but upon a count, and comparing them with the judges' return, he thinks they were counted.*"

The whole vote returned was, according to the poll-books, 185, of which Barrett had 153, Breckinridge 24, and Blair 7. By reference to the abstract of ballots, Barrett has 154, Breckinridge 23, Blair 7, showing that, if the votes were not counted, it could have been through no design to promote Barrett's interests; for the *returns* gave him only 153 votes, when a *count* of the ballots subsequently made shows that he was entitled to 154. This is conclusive, that if any fraud was intended (of which there is no proof) it was not intended for the benefit of the sitting member.

It is also alleged that 19 votes belonging to the contestant were improperly thrown out by the judges of the western precinct of the first

ward. This allegation was examined at page 10 of this report; and from this examination it appeared that but 4 votes, instead of 19, had been thrown out. The undersigned have given the contestant the benefit of these 4 votes in the statement which they have made of the legal votes received by the respective candidates. There was, however, no more fraud in the omission of the judges to count these four votes than in the mistake which gave the contestant 183 votes more than he was entitled to in the eastern precinct of the seventh ward.

There is no proof whatever of any fraud having been practiced by the judges in counting the votes. This charge is therefore dismissed.

7th charge—Threats of Judge Hackney by which persons were compelled to vote.

There is no proof either that Hackney threatened anybody or that anybody ever voted in consequence of any such threat. The charge is entirely groundless as far as proof is concerned. But, were it otherwise, there is no connexion between Judge Hackney and the sitting member, nor any reason why the latter should be made responsible for his acts. This charge is dismissed.

8th charge.—Fraudulent imposition of tickets on persons who could not read English.

This charge, like the last, is unsustained by proof. There is no evidence that a ticket was voted by any one, either ignorantly or knowingly, that was repugnant to his wishes or sentiments. The Irish beggar that Blow swears Donnelly jerked out of his hands and took to the grocery, but who went with him willingly, as it is proved by Donnelly and others, was the only voter interposed with in any manner. His case, in which there was nothing like the fraudulent imposition of one ticket for another, has been already fully considered, (p.)

9th charge.—The comparison of the vote of the sitting member in 1858 *with the vote of Reynolds in* 1856.

The comparison instituted by the contestant between the vote cast for Reynolds in 1856 and that cast for the sitting member in 1858 is regarded by the undersigned as of no value in deciding the question at issue in this contest. The circumstances at the two elections were so different as to render a comparison worthless altogether; and the undersigned are surprised that the contestant should have instituted one. In 1856 the contestant and Mr. Reynolds were both democratic candidates, representing the different sections of the party. It would be therefore far more just and proper to institute a comparison between the united vote of the contesant and Mr. Reynolds and that of the sitting member, than between the vote of the latter and that of Mr. Reynolds, who received but a fragment of the vote of the democratic party.

At the election in August, 1858, Mr. Barrett was the sole candidate

of the united democracy of the city and county of St. Louis ; to compare his vote, therefore, with that of Reynolds, who was the candidate in 1856 of a mere fragment, and much the smaller of the two fragments into which the party was at that time divided, is better calculated to deceive than enlighten the mind of the committee. The undersigned do not impute any such purpose to the contestant ; but the comparison which he has instituted, if the facts were not understood, could hardly fail to mislead.

But every one who has observed the fluctuation to which public opinion is liable, especially on political subjects, will see how unsafe it would be to rely on any evidence derived from a comparison of the votes received by one candidate with those received at a previous time by another. Increase of population ; the popularity of one candidate and the unpopularity of another ; change of political views on the part of one candidate or the other between one election and the other, all enter into and vary the result, so as to render a comparison of the vote of one candidate at one time with that of some other candidate at another time, entirely valueless as a criterion by which to judge of the fairness of the election of one or the other.

In the case in question it is sufficient to say that the sitting member can lose nothing by a comparison, instituted on fair principles, between the vote received by him, as the sole candidate of the democracy in 1858, and that received by the two candidates of that party in 1856. The united vote of Blair and Reynolds, the democratic candidates for Congress in 1856, was 8,216 ; that of Barrett in 1858, after deducting 27 illegal votes, and adding the votes to which he was entitled through miscount, is 7,075. By this comparison of the democratic vote at the two elections, it appears that Barrett fell short of the vote of Blair and Reynolds, notwithstanding the increase of population between the one election and the other, 1,171 votes.

10*th charge.—The judges and clerks were not qualified to act, through a failure to take and subscribe the oath required by law ; nor were the returns made according to law.*

This charge is based on the allegation that the judges and clerks in the eastern precincts of the fifth, sixth, seventh, and eighth wards in the city, and the Gravois, Sappington, and Harlem House precincts in the county, were not sworn according to law. That the judges and clerks in all these precincts were, in fact, sworn, there is no doubt ; but it is contended there is no evidence of this fact, other than is found on the face of the returns themselves, and that this is not sufficient.

In the sixth, seventh, and eighth wards everything is regular, the law having been literally complied with. The objection made by the contestant to the return from the eastern precinct of the sixth ward has been already examined (pages 35, 36, and 37) in the case of the officers who officiated at the Gravois precinct. It was there shown that there is nothing either anomalous or incompatible with the statute in a judge swearing himself and subscribing the affidavit.

The next case is that presented by the affidavit of the judges of the eastern precinct of the fifth ward. It appears that in this precinct all

of the judges were sworn, but that *two only* subscribed the oath.—(P. 226.) The following is the oath:

STATE OF MISSOURI, *County of St. Louis, ss:*

We, Oliver Harris, Joseph W. White, and T. W. Pratt, do swear that we will impartially discharge the duty of judges of the present election according to law and the best of our abilities. So help us God.

OLIVER HARRIS.
JOSEPH W. WHITE.

Sworn to and subscribed before me the 2d day of August, 1858.
LIBERTY WAITE, *Justice.*

COUNTY OF ST. LOUIS, *ss:*

We, J. A. Pratt and S. H. M. Hall, do swear that we will faithfully record the names of all the voters at the present election.

J. A. PRATT.
S. H. M. HALL.

Sworn to and subscribed before me the 2d day of August, 1858.
LIBERTY WAITE, *Justice of the Peace.*

From the oath itself, it appears that all three of the judges were *sworn*; but only two of them subscribed the oath. By the laws of Missouri, neither the judges or clerks are required to subscribe the oath. The following is the form of the oath prescribed by the statute: "The judges, before they enter on their duties, *shall take* the following oath or affirmation, to be administered by one of their body, or by any magistrate authorized to administer oaths: 'I do swear (or affirm) that I will impartially discharge the duties of judge of the present election according to law and the best of my abilities. So help me God.'"—(Rev. Stat. of Missouri, ed. 1855, sec. 12, p. 703.)

The provision relating to clerks is the same. Like the above, it requires that the clerks "*shall take*," not that they *shall subscribe*, an oath or affirmation. And as the statute does not require the oath to be subscribed, it will hardly be insisted by any one aware of this fact that the acts of the judges and clerks are rendered void because they did not do what the law does not require at their hands. The fact, therefore, that T. W. Pratt did not subscribe the oath does not vitiate the proceedings or avoid the election.

But it is urged that there is not sufficient proof that all three of the judges were sworn; that the proof that they were all sworn is derived from the certificate of Liberty Waite, the justice who administered the oath; but that inasmuch as it appears by reference to the oath that the certificate of the justice is untrue, so far as subscribing is concerned, it is discredited as to the swearing likewise.

When the law makes the certificate of a magistrate or other officer evidence of the facts it asserts such evidence is conclusive; nor is it impeachable, except for fraud. This being so the only question in reference to the matter is, whether the certificate *that the judges were*

sworn is to be invalidated by the fact that *one* of them did *not subscribe* the oath? It is to be borne in mind that there is nothing in the laws of Missouri requiring any of the judges to subscribe the election oath.

In the judgment of the undersigned the question suggested in relation to the validity of the certificate is one which presents no difficulty. If they are right in supposing that the laws of Missouri relative to elections do not require the judges or clerks to subscribe the oath then the certificate of the judge or magistrate that it was sworn and subscribed is surplusage so far as it certifies to "subscribing." Where an immaterial act, not required by law, is done by an officer in the performance of his duty, such act is not permitted to vitiate the thing which has been done, but is treated as surplusage. This rule is very general, and is directly applicable in the present case.

The certificate, therefore, of Liberty Waite, esq., that the judges were "sworn and subscribed" is a good and valid certificate that they were sworn. This being all that the law requires, that part of the certificate which refers to the subscribing of the oath should be treated as surplusage.—(See 3 Hill, p. 42.)

The objection to the validity of the election and return in this precinct is not sustained. There was no doubt entertained by any one of the fact that the judges had been sworn according to law. The only question was, whether the form of the proof that they had been so sworn was sufficient. On examination the undersigned are satisfied that it was, and that the objection urged by the contestant is not sustainable even by invoking the application of the strictest rule of evidence. We now proceed to examine the question arising in relation to the qualification of the officers at the Gravois precinct. The only objection to the qualification of the judges at the Gravois precinct is, that Mr. Haight, one of the judges, swore himself as well as the other judges and clerks. It appears that he took and subscribed the oath required by law, but did so without the intervention of a magistrate. The right of a judge under the election laws of the State of Missouri to swear himself and administer the oath to his colleagues has been considered at page thirty-five of this report. The law clothes him with this power in express terms; and the qualifications of the judges who officiated at the Gravois were, in the judgment of the undersigned, in all respects sufficient.

The Sappington precinct presents the same question, in relation to the qualification of the election officers, as was presented at the Gravois coal mines. At the latter place Mr. Haight took the oath himself, and administered it to his colleagues; at the former, Harrison L. Long did the same thing. A repetition of the argument, showing that the acts of these officers were in accordance with the laws of the State, and in all respects valid, would be useless.

The following is the form of the affidavit and certificate at the Harlem House precinct, being the 35th election district in the county of St. Louis:

STATE OF MISSOURI, *County of St. Louis, ss:*

Poll-book of an election held at the Harlem House, St. Louis township, being the thirty-fifth election district of the county of St. Louis,

on the first Monday, being the second day, of August, eighteen hundred and fifty-eight, for one representative from the first congressional district of the State of Missouri to the thirty-sixth Congress of the United States; for four senators to the senate of the State of Missouri; for twelve representatives to the general assembly of the State of Missouri; for sheriff, marshal, coroner, public administrator, county treasurer, jailer, school commissioner for the county of St. Louis, and for superintendent of common schools; for two constables for St. Louis township.

STATE OF MISSOURI, *County of St. Louis, ss:*

We, Jacob Bittner, Michael Shahan, and John Kelly, do swear that we will impartially discharge the duty of judges of the present election according to law and the best of our abilities. So help us God.

Sworn to and subscribed before me the 2d day of August, 1858.

COUNTY OF ST. LOUIS, *ss:*

We, M. E. F. Pollock and Pa'k Hurst, do swear that we will faithfully record the names of all the voters at the present election.

Sworn to and subscribed before me the 2d day of August, 1858.

JACOB BITTNER,
One of the Judges of Election.

This case presents substantially the same question that arose in the Gravois and Sappington precincts; the only difference being that in those cases the oath was subscribed by all the judges and clerks, and in the present case by none of them.

In this case, as in those mentioned above, one of the judges swore himself, and administered the oath to his associates as well as to the clerks. This is in accordance with the laws of Missouri, as the undersigned have endeavored to show in considering the case which arose in the eastern precinct of the 5th ward, page 64 of this report. But in this case the judge not only swore himself and his associates, but fell into another alleged irregularity in not subscribing the oath. This is the complaint.

The election laws of Missouri, (Revised Statutes, edition 1855, sec. 12,) prescribing the forms to be observed and the duties to be performed by officers of elections, have not required them, as has been already stated, to subscribe the oath. The failure, therefore, of the officers to subscribe the oath is not a violation of law, and does not vitiate the proceedings. This was shown in the case of T. W. Pratt, a judge of the eastern precinct of the 5th ward, page 35 of this report.

But it is alleged that the returns from the three last-mentioned precincts, viz: the Gravois, Sappington, and Harlem House precincts, were illegal, inasmuch as they were not accompanied by a *certificate of the qualification* of the officers of the election by the judge or justice who administered the oaths in the several cases. This objection, which is purely technical, is based on an act of the Missouri legislature, passed in 1825, but which has been since repealed and supplied.

The provisions of the law regulating the manner of holding elections and making the returns are the following:

It is provided by the act of 1855, section 12, "that the judges, before they enter on their duties, shall take the following oath or affirmation, to be administered by one of their own body, or by any magistrate authorized to administer oaths: 'I do swear (or affirm) that I will impartially discharge the duties of judge of the present election according to law and the best of my abilities, so help me God.'"

"SEC. 20. At the close of each election the judges shall certify, under their hands, the number of votes given for each candidate, which shall be attested by their clerks, and transmit the same, together with their poll-books, by one of their clerks, to the clerk of the county court in which the election was held, *within two days thereafter;* the other poll-book shall be retained in the possession of the judges of the election, open to the inspection of all persons."

By the act of 1825, section 17, it is enacted:

"That the votes given at all elections in this State shall be given *viva voce*, or by a ticket handed to the judges and then read, and the clerks to note them as before."

The same general provision is enacted in section 37 of the election law of 1855; but there is a provision in section 18 of said law that—

"*All* elections in the city and county of St. Louis shall be *by ballot*, and shall continue for one day and no longer, and shall be conducted, in all respects, as provided by the law now in force regulating elections in said county."

The law of 1825, in section 7, enacts—

"That the judges appointed as aforesaid, shall, before entering upon the duties of their appointment, severally take the following oath or affirmation: 'I, A B, do solemnly swear (or affirm, as the case may be,) that I will faithfully and impartially discharge the duties of judge of the present election according to law and the best of my abilities, *and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.*'"

By the 18th section of the act of 1825 it is enacted that—

"The several oaths required to be taken by this act shall be administered by a justice of the peace, if any shall be present; but if there should be no justice of the peace present, the oath shall be administered by any one of the judges; *and in either case a certificate of their qualifications shall be returned with the return of the voters.*"

Act 1825, section 10:

"That at the close of each election the judges of the several townships shall cause a fair abstract of the votes given for each person to be made out and certified under their hands and attested by their clerks, which they shall cause to be transmitted, *together with the poll-books*, by one of their clerks, *to be chosen by lot*, to the clerk of the court or tribunal having the transaction of county business for the county in which said election is held, *within five days* after a general election and *three days* after a special election."

The provisions of the acts of 1825 and 1855, so far as they relate to the manner in which the officers of election are to be sworn, and by

whom they are to be sworn, are substantially the same. *Both* acts require the judges to take an oath or affirmation that they will impartially discharge their duties, &c. Both authorize the oath to be administered by one of the judges, or by a justice of the peace, and neither requires the oath or affirmation to be *subscribed.*

But the act of 1825, section 18, in providing that the oath to be taken by the officers of election may be administered either by a justice of the peace or by one of the judges, adds: "*and in either case a certificate of their qualifications shall be returned with a return of the voters.*"

But this act was repealed by the act of 1835.—(Rev. Stat. of Missouri, 1835, sec. 33, p. 384.) All laws not re-enacted by the last-mentioned act, or which are not thereby directed to be retained, are expressly repealed.

The provision requiring a certificate of the qualifications of the judges and clerks to be returned along with a return of the votes being *neither re-enacted nor directed to be retained* was therefore repealed. The act of 1835 is still in force, having been, with slight alterations, twice re-enacted.

There are a number of important changes in the election laws since 1825. The vote was *viva voce* until changed, so far as the city of St. Louis was concerned, by the 18th section of the act of 1855, which is as follows:

"*All* elections in the city and county of St. Louis shall be *by ballot*, and shall continue for one day, and no longer, and shall be c nducted, in all respects, as provided by the law now in force regulating elections in said county."

If the act of 1825 yet controls in the city and county of St. Louis the election of a representative to Congress, and the act of 1855 does not, then the vote by ballot has been wrong; it should have been *viva voce*, or by open ticket, read by the judges and noted by the clerks.

If the act of 1825 regulates this election, then the election might have been continued two days (instead of one) by "the court, for the transaction of county business"—(See section 9, act of 1825.)

If the act of 1825 regulates the congressional election, then all over Missouri the judges who hold the congressional election take a different oath from the oath taken by the judges who conduct the election of governor, members of the legislature, and other State officers.

But it is enough to say that the certificates of qualification, in the cases to which objection has been made, are the same as the certificates in the wards returning majorities for the contestant, and as those hitherto returned in similar cases in the city of St. Louis. In the Harlem House precinct neither judges nor clerks subscribed the affidavit; but a certificate that both judges and clerks had been sworn, &c., was returned to the county clerk, as required by law, along with the poll-books and abstract of votes received by the several candidates who had been voted for at the election. It has been shown already that the law does not require the oath to be subscribed.

It is unimportant, therefore, whether the clause of the act of 1825, requiring a certificate of the qualifications of the judges to be returned to the county clerk, has been repealed or not; for in respect to the re-

turns from the Gravois, Sappington, and Harlen House precincts, the certificates were returned. If, therefore, the qualifications of the election officers were sufficient, all the objections on account of irregularity in making the returns are removed. That the qualifications of these officers under the laws of Missouri were sufficient the undersigned have already attempted to show.

But even admitting that the qualifications of these officers were irregular and informal, their acts, as respects the public, are not therefore void, or even voidable.

It has been long settled that the acts of *de facto* officers, whether judicial or ministerial, are valid, both as regards the public and third persons. In courts of justice there is no conflict of authority on this point, either in this country or England.

"It does not vitiate an election that the inspectors and clerks were not sworn, nor that the oath was administered in an irregular manner."—(*People vs Cook*, 4 *Selden's Rep.*, 67.)

"Statutes directing the mode of proceedings by public officers have always been treated as *advisory*, and not intended to invalidate the vitality of the proceedings themselves, unless expressly so provided."—(*Holland et. al. vs. Osgood*, 8 *Vermont R.*, 280.)

"Jones was a justice of the peace *de facto*. He came into his office by color of title. It is a well settled principle that the acts of such an officer are as valid, so far as the public or the rights of third persons are concerned, as though he had been an officer *de jure*, &c."—(*Greenleaf vs. Low*, 2 *Denio*, 170.)

"It is the same thing, whether the act in question be *judicial* or *ministerial*. Thus, in *Rex vs. The Corporation of Bedford Level*, 6 *East.*, 356, it was not questioned that the acts of a deputy registrar *de facto*, whose duty related merely to recording titles to land in a certain place, would be valid. Lord Ellenborough, in the above case, defines such an officer. 'It is one,' he says, 'who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law.'

"*In Knight vs. The Corporation of Wells*, 1 *Suter*, 508, a mayor *de facto* was holden able to bind the corporation by affixing the seal to a bond. The court said, 'admitting he was not qualified to be mayor, yet he came to be mayor by color of an election, and was mayor *de facto* by means of that election, and *all ministerial and judicial acts done by him are good.*'"—(19 *Wendell*, 144. *See also* 24 *Wendell*, 520. 1 *Hill*, 675.)

"Lynde, notwithstanding his omission to take the oath of office, was a justice of the peace *de facto*. He came regularly into office at the proper time, and assumed to act in the capacity of justice. The defect complained of does not go to his jurisdiction. *He was not, in terms, prohibited from acting before taking the oath.*"

"The law does not require third persons, at their peril, to ascertain whether a magistrate coming into office by color of a regular election, and acting as such, has taken the requisite steps to continue in it. The affairs of society could not be carried on unless confidence were reposed in the official acts of persons *de facto* in office."—(*Weeks vs. Ellis*, 2 *Denio*, 320, 325.)

This case expresses the reasons on which the acts of persons *de facto* in office are supported. The mischiefs which society would suffer were the acts of *de facto* officers declared void would be great indeed, and in no case would the consequences of declaring the acts of such persons void be more inconvenient, or subject to juster disapproval, than in the case of election officers. To disfranchise and defeat the declared will of a whole community for no fault of their own, or of the candidate on whom their suffrages were bestowed, through the mere omission of a judge or clerk to subscribe his name to the oath, would be an intolerable hardship and wrong.

But it is alleged that this rule is reversed by the congressional decisions, and cases are referred to in proof of the allegation.

The first case wast hatof McFarland *vs.* Purviance.—(Cont. Elec., p. 131.) In that case it was proved that the inspectors and clerks of the election *refused to take the oath* to act with justice and impartiality, though McFarland demanded, at the opening of the polls, that they should do so, as required by the statute of North Carolina. The Committee of Elections reported *affirmative evidence of this refusal on the part of the officers*, and proposed to set aside the election for Montgomery county on that account. The report was referred to a Committee of the Whole House, who were afterwards discharged from the further consideration of the matter, and the House never acted upon the report or the case. *It therefore furnishes no authority.*

The next case was McFarland *vs.* Culpepper, (1807,) (see Contested Election Cases, 222,) where the same question arose. It appeared by testimony to the committee that in some counties the officers were sworn after the election; in other counties they were not sworn at all as the statute required. The point we make is, that there was no presumption indulged in; *the depositions proved the fact* that the inspectors *were not sworn.* The House declared Mr. Culpepper not entitled to his seat, in accordance with the report of the committee, and *a new election was ordered.*

In the case of Porterfield *vs.* McCoy, (1815,) (see Contested Election Cases, 268,) one of the grounds of contest was, *that the clerks were not sworn previous to the commencement of the voting*, but on the next day after the election examined and subscribed the poll and made affidavit thereon "that the same did contain a just and true account of all the votes taken at said election, to the best of their knowledge and belief." The clerks were heard as witnesses. The committee say "it was not alleged or pretended that the final result had been in anywise varied in consequence of a deviation in these particulars from the letter of the law regulating elections," and they regard the errors more of form than of substance. The committee concluded that all votes recorded on the poll-lists should be presumed good unless impeached by evidence, and the House confirmed the report, and the sitting member retained his seat. This authority is *directly in our favor.* The case of Easton *vs.* Scott is frequently quoted to sustain the proposition of the contestant.—(Contested Election Cases, 273.) This was a case from Missouri. The contestant, after citing the statute of Missouri requiring the judges and clerks to be sworn before they enter upon the acceptance of votes, offered testimony from one of the judges that Roy

was the only person who acted as judge with him, and that there was but one clerk, "and that neither of the judges or clerk were sworn." The law required three judges and two clerks. It further required that the person who administered the oath to the judges should "cause an entry thereof to be prefixed to the poll-book, (here follows the form of the certificate,) which certificate shall be subscribed by the person administering said oaths, and be considered as a part of the record of said election." But there were other grounds than this to set aside the return. It was alleged that persons were forced to vote by these judges; that names were put on the poll-books who did not vote; and there was positive testimony that other names were on that poll where the persons so named had not been in the territory for eight months preceding the election; also, witnesses were introduced who proved that their own names were returned as voting, though they were absent from the precinct at the election.

The Committee of Elections, referring to the poll of Coté San Dessein, reject the same for several reasons, among which appears this:

"But two persons acted as judges, and neither of them was sworn." The committee, however, give four or five reasons why this poll-book should be rejected; some exhibiting gross outrages upon the purity of the election. It is observable in this case, like the others, that *affirmative testimony by witnesses is introduced to prove the fact that the officers were not sworn*, and that the rejection of the poll-book does not rest on the fact alone that the officers were not sworn; this was only one of several reasons, any of which was sufficient. *In this same case* the return from another precinct was challenged, "because the clerks of the election were not sworn," and the committee overruled the objection, "*because it was not supported by any affirmative evidence.*" The committee inspected a certified copy of the poll-book, and satisfied themselves in some way, from the inspection, "that the clerks were in fact sworn," and decided *against rejecting the return.* If the ruling, therefore, means anything, it agrees with Porterfield *vs.* McCoy. This report was, on motion of Mr. Webster, recommitted, with instructions to the committee to hear proof *as to the right of each individual voter whose vote was challenged*, (*accepting all the rest, of course, as they were inscribed in the poll-book*,) and a second report was made by the committee, to the general purport that no testimony on the point of qualification of voters had been offered, and that the committee would not have time to enter on a full investigation. The resotion offered by the committee gave the seat to Easton; the House *refused to endorse the report.* The House only declared that "the election had been illegally conducted," and therefore that the seat was vacant. We look in vain for any ruling of the point in question by the House.

In the case of Draper *vs.* Johnson, in the 22d Congress, the committee submitted a series of resolutions embracing the rule by which they proposed the case should be decided. They are as follows, as far as they relate to this branch of the case:

1st. The legal presumption is, that the oath required has been taken, every officer being presumed to have done his duty, and that

the *onus* is thrown on the party taking the objection to show the neglect or omission.

2d. That the neglect of the sheriff or other officer conducting the election to take the oath required by law vitiates the poll for the particular precinct or county, and the whole vote of such precinct is to be rejected.

In that case the sheriff came forward and testified that he had *not* been sworn, making still another case to show that wherever the legal presumption has been overruled it was by force of positive testimony offered to the fact that there had been a neglect of duty or refusal to perform it. The report of the committee was voted down by the House, so that the action of the House, so far from lending authority to this case, is authority the other way.

It is thus apparent, while the judicial decisions are uniform in declaring the acts of *de facto* officers valid, no authoritative rule establishing a contrary doctrine is to be gathered from the congressional precedents.

It is doubtless true that Congress, under the influence of party expediency, or swayed by the passions of the hour, has, on one or more occasions, departed from the salutary rule established on this subject by the judicial tribunals. But there has been no such uniformity of action on the part of Congress as is required to settle a principle or establish a rule in conflict with the judicial decisions.

The undersigned are therefore of opinion that if the election officers had even failed to qualify according to the requirements of the laws of Missouri, these acts would still be valid under the rule of law which makes the acts of *de facto* officers valid. They do not feel called on to invoke this rule in behalf of the sitting member, believing, as they do, that there was a substantial compliance with the provisions of the law on the part of the election officers. But were it otherwise, the acts of the judges and clerks, performed under the color of office, would be valid as the acts of officers *de facto*.

There is but another point to notice. The contestant complains of the largeness of the vote cast at the election, and refers to it as an evidence of fraud. His own evidence dissipates this charge.

According to the returns of the census, which was taken soon after the election, for the purposes of this contest, the total number of legal voters in the city of St. Louis is 24,256; excess over vote, 7,646.

This shows that there were in August, 1858, in the city of St. Louis, as many as 7,646 legal voters who did not vote.—(See *certified* copy of the census returns, page 946.)

At the following municipal election held in April, 1859, just eight months afterwards, the vote cast in the city was 17,263.

The election in August, 1858, was a general and an exciting one, there being seventy-five candidates on State and county tickets, besides a number in each ward running for the offices of justice of the peace and constable. This was calculated to bring out a large vote.

The undersigned have now concluded this long and tedious examination. They have investigated the case and stated their views at more than ordinary length, because they were not made aware of the specific grounds on which the majority of the committee arrived at a

conclusion so entirely opposite to their own. This compelled them to embrace in their examination every ground of charge preferred by the contestant. They do not regret that they have done so, as it has convinced them more than ever of the entire groundlessness of contestant's claim to the seat occupied by the sitting member.

Respectfully submitted.

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LUCIUS J. GARTRELL.
JOHN A. GILMER.